Supreme Court, U.S.
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No.

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In The

Supreme Court of the United States

October Term, 1994

HONORABLE NATH C. DOUGHTIE and HONORABLE KARL B. GRUBE,

Petitioners,

vs.

FLORIDA DEPARTMENT OF STATE, JIM SMITH, SECRETARY,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does a state statute that was enacted for the specific purpose of raising revenue to fund the partisan political campaigns of candidates for the elective offices of Governor and Executive Cabinet by imposing a substantial monetary filing fee upon aspirants to candidacy for the elective office of judge place an impermissible burden upon the First Amendment rights of the aspirants to judicial candidacy who are required by the state to pay the fee for such a purpose?

2. What standard of judicial scrutiny applies to filing fees imposed upon aspirants for elective judicial office for the purpose of raising revenue to finance the partisan political election campaigns of candidates for Governor and Executive Cabinet offices?

LIST OF ALL PARTIES TO THE PROCEEDING

Petitioners, Nath C. Doughtie and Karl B. Grube were plaintiffs in the district court and appellants in the Court of Appeals. Respondent Jim Smith, Secretary, Florida Department of State, was the defendant in the district court and appellee in the Court of Appeals.

Joseph W. Little was also initially a plaintiff in the district court but was voluntarily dismissed as a party before the district court issued the order that is the subject of this petition. He has no further interest as a party.

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OPINIONS AND ORDERS BELOW

The Opinion to be reviewed is:

Little, et al. v. Florida Department of State, Jim Smith, Secretary, 19 F.3d 4 (11th Cir. 1994).

The Order reviewed by the Court of Appeals is:

District Court Order of July 23, 1992, Case No. 92-40122 - MPP, United District Court, Northern District of Florida, Tallahassee Division.

STATEMENT OF JURISDICTION

(i) Date of Entry of Judgment to be Reviewed:

April 14, 1994

(ii) Date of Order Denying Rehearing and Suggestion of Rehearing En Banc:

June 24, 1994

(iii) Reliance on Rule 12.3:

None

(iv) Statutory Provision Believed to Confer Jurisdiction on the Court:

28 U.S.C. § 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(i) Constitutional Provision:

First Amendment, United States Constitution

> Congress shall make no law . . . abridging the freedom of speech . . . .

(ii) Statutory Provisions:

Chapter 91-107 Laws of Florida, appended as Appendix D.

STATEMENT OF CASE

A. Basis of Jurisdiction of the District Court

228 U.S.C. § 1331

B. Facts Material to the Questions Presented

In its 1991 regular session the Florida Legislature determined to strengthen "the integrity of, and public confidence in, the electoral process in the state of Florida." To accomplish its purpose, the Legislature enacted a law that, *inter alia*, establishes "public funding of political campaigns." Ch. 91-107 Laws of Florida, Preamble (hereinafter referred to as Ch. 91-107) (Appendix D, 25a). To obtain the money to provide the "public funding of political campaigns," the Legislature, enacted Ch. 91-107, which increased the "filing fee for persons seeking to qualify for nomination or election to certain offices" and, simultaneously mandated that the amount of the increase "of the fee to be transferred to the Election Campaign Trust Fund." (Ch. 91-107, Title, Appendix D, 22a). Specifically, as applies to Petitioners

Doughtie and Grube, Ch. 91-107 enacted a new 50% increment in the amount of the filing fee imposed by the state upon aspirants for elective judicial office (*i.e.*, from 3% of the annual salary of the office sought to 4.5%) and simultaneously directed that the entire new increment be transferred to the Election Campaign Financing Trust Fund," Ch. 91-107, § 5, amending § 105.031, Fla. Stat. (Appendix D, 30a), which has the sole purpose of funding the partisan political election campaigns of candidates for offices of Governor and Executive Cabinet.

In enacting Ch. 91-107, the Florida Legislature forthrightly acknowledged that the statute affected protected constitutional rights and made the following finding: "the Legislature has determined that the measures set forth below are narrowly tailored to serve the compelling state interest in the electoral process, and that they are the least restrictive alternatives . . ." Preamble, Ch. 91-107. (Appendix. D, 25a). Furthermore, the Florida Supreme Court has specifically acknowledged that "Two provisions of Section 106.32 [*i.e.*, as amended by Ch. 91-107] provided for financing the Trust Fund [*i.e.*, the fund for financing the election campaigns of candidates for Governor and Executive Cabinet] through proceeds *from candidates' filing fees . . .*" *Republican Party of Florida v. Smith*, 638 So. 2d 26, 27, n. 2 (Fla. 1994).

The Election Campaign Financing Trust Fund is established by law in the State Treasury of Florida for the sole purpose of providing public monies from the State Treasury to finance the partisan political campaigns of candidates for Governor and for offices in the Florida Executive Cabinet. Funds are provided to candidates for no other office. Ch. 91-107, §§ 19, 20 amending §§ 106.32, 106.33 Fla. Stat. (Appendix D, 51a-58a). No financing is available from this fund for the political campaigns of candidates for elective judicial offices, as were Petitioners Doughtie and Grube at the time in question. In sum, in enacting Ch. 91-107, § 5 (Appendix D, 30a) the state of Florida imposed a substantial new

charge on Petitioners Doughtie and Grube as a condition of their exercising their political First Amendment rights to become candidates for elective public office, and did so solely to finance the partisan political campaigns of other candidates for other offices.

Prior to the 1992 election for judges in Florida, Doughtie was an incumbent circuit judge in Alachua County, Florida, having initially been seated in 1987. Doughtie desired to seek reelection in 1992 and as a condition of qualifying for candidacy was required by the state of Florida to pay the new fee increment imposed by Ch. 91-107, § 5 in the amount of 1.5% of the annual salary of the office he sought, of which the entire new increment was transferred to the Election Campaign Trust Fund pursuant to Ch. 91-107, § 5 to be used exclusively to defray the financing of political campaigns of partisan candidates for officers of Governor and Executive Cabinet. Under protest, Doughtie[1] paid the challenged 1.5% new increment amounting to approximately $1,350, despite his contention that the increment enacted by Ch. 91-107 placed an unconstitutional burden on his First and Fourteenth Amendment rights of candidacy to elective office. A part of the remedy he seeks is to have the state reimburse him that amount.

Prior to the 1992 election, Petitioner Grube was an incumbent county judge in Pinellas County, Florida, having been initially seated in January, 1977. Grube desired to seek reelection in 1992 and as a condition of qualifying for candidacy was required by the state of Florida to pay the new fee increment imposed by Ch. 91-107, § 5 in the amount of 1. 5% of the annual salary of the office he

---

1. Doughtie had no alternative to paying the fee because the then statutory alternative of obtaining signed petitions required him to take an oath that to pay the fee placed an "undue burden" on his personal finances, which he could not truthfully do. The undue burden requirement was struck down by the district court but only after Doughtie had been required to qualify by paying the fee.

sought, of which the entire new increment was transferred to the Election Campaign Trust Fund pursuant to Ch. 91-107 to be used exclusively to defray the financing of political campaign of partisan candidates for offices of Governor and Executive Cabinet. Grube[2] paid the challenged 1.5% new increment amounting to approximately $1, 200, despite his contention that the increment enacted by Ch. 91-107, § 5 placed unconstitutional burdens on his First and Fourteenth Amendment rights of candidacy to elective office. A part of the remedy he seeks is to have the state reimburse him that amount.

Doughtie and Grube joined as parties to this lawsuit challenging, *inter alia,* that the requirement imposed upon them by Ch. 91-107, § 5 to pay the newly enacted 1.5% filing fee increment to be paid into the Election Campaign Trust Fund imposed an unconstitutional burden upon their rights to become candidates for elective office of judge. The remedies Petitioners sought were, *inter alia,* an order to Respondent Smith, as Florida Secretary of State, directing him to strike the challenged portion of Ch. 91-107 (*i.e.,* Section 5, Appendix D, 30a) from the statute books and to direct the state of Florida to reimburse to Petitioners the amounts unconstitutionally obtained from them. The state defended the action on the asserted grounds, *inter alia,* that Petitioners Doughtie and Grube were merely challenging an appropriation such as that affirmed by this Court in *Buckley v. Valeo,* 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976), and that such an appropriation was not subject to judicial review.

In an order issued July 23, 1992 the district court accepted Respondent's analogy to *Buckley* and dismissed Petitioners'

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2. Grube had no alternative to paying the fee because the then statutory alternative of obtaining signed petitions required him to take an oath that to pay the fee placed an "undue burden" on his personal finances, which he could not truthfully do. The undue burden requirement was struck down by the district court, but only after Grube had been required to qualify by paying the fee.

Doughtie and Grube First Amendment challenge as being merely a "true challenge to the manner in which the funds are allocated." The district court's order stated, in part:

> Plaintiffs in *Buckley* challenged the election campaign check-off provision on tax returns, and asserted that they should be able to designate which candidate their donation would be used to support. In rejecting this challenge, the Court wrote the following:
>
> > The fallacy of appellants' argument is therefore apparent; every appropriation made by Congress uses public money in a manner to which some taxpayers object. . . . Congress need not provide a mechanism for allowing taxpayers to designate the means in which their particular tax dollars are spent.
>
> *Id.* at 669 & n. 125, 91 S. Ct. at 91-92 & n. 125.
>
> The situation here [*i.e.*, Petitioners' case] is virtually identical. Money in the form of filing fees is deposited into general revenue for use therein and in the campaign trust fund. Once the existence and amount of the fee is found to pass constitutional muster, as set forth above, this appropriate is the only matter that remains for objection. The above makes clear that such an objection will not be heard.

Appendix B, 11a-12a.

In short, the district court concluded that because, in the

abstract, the state may constitutionally impose filing fees, and because, in the abstract, a state may appropriate general revenues to provide public funding of political campaigns, then the state may also impose a filing fee upon aspirants for elective judicial office for the sole purpose of funding the partisan political campaigns of candidates for other offices.

Petitioners Doughtie and Grube appealed this ruling to the United States Court of Appeals for the Eleventh Circuit. On April 15, 1994, the Court of Appeals issued the opinion which Doughtie and Grube petition this Court to review. In that opinion the Court of Appeals merely adopted and quoted portions of the opinion of the district court without evidencing that it had made any independent evaluation of the First Amendment issues raised by Petitioners (Appendix A, 1a, *et seq.*).

Petitioners Doughtie and Grube filed a timely Motion For Rehearing and Suggestion For Rehearing En Banc seeking rehearing and en banc consideration of these two issues:

> 1. Is a state statute, Ch. 91-107 Laws of Florida, that shows on its face that its purpose is to place a substantial tax on a First Amendment right unconstitutional?
>
> 2. Is this Court [*i.e.*, the Court of Appeal] required to follow the settled law in this circuit and the United States that an appellate court is to give independent de novo reviews of the entire record in claims of First Amendment violations?

On June 24, 1994, the Court of Appeals entered an order denying Petitioners' Motion For Rehearing and Suggestion For Rehearing En Banc (Appendix C, 20a-21a).

REASONS FOR GRANTING THE WRIT

I.

DOES A STATE STATUTE THAT WAS ENACTED FOR THE SPECIFIC PURPOSE OF RAISING REVENUE TO FUND THE PARTISAN POLITICAL CAMPAIGNS OF CANDIDATES FOR THE ELECTIVE OFFICES OF GOVERNOR AND EXECUTIVE CABINET BY IMPOSING A SUBSTANTIAL MONETARY FILING FEE UPON ASPIRANTS TO CANDIDACY FOR THE ELECTIVE OFFICE OF JUDGE PLACE AN IMPERMISSIBLE BURDEN UPON THE FIRST AMENDMENT RIGHTS OF THE ASPIRANTS TO JUDICIAL CANDIDACY WHO ARE REQUIRED BY THE STATE TO PAY THE FEE FOR SUCH A PURPOSE?

Although this Court has long acknowledged that opportunity of candidacy for elective public office possesses attributes protected by the First Amendment, the guideposts provided by the Court's decisions are not yet comprehensive. Consequently, this Court's decisions to date leave state legislatures considerable unguided latitude to burden First Amendment interests impermissibly in the critical field of political freedom, either advertently or inadvertently, by enacting statutes such as Ch. 91-107, § 5 (Appendix D, 30a). Petitioners Doughtie and Grube's case offers this Court an opportunity to plant a firm guidepost in the road to prevent an onslaught of direct infringements on the vital First Amendment interests of becoming a candidate for public office.

This Court's precedents leave no doubt that the opportunity of political candidacy invokes First Amendment protection. In *Brown v. Hartlage*, 456 U.S. 45, 102 S. Ct. 1523, 71 L. Ed. 2d 732 (1982), this Court held that a Kentucky statute that punished a candidate's

political speech made during a political campaign (*i.e.*, the statute was invoked to punish the candidate for stating that, if elected, he would serve in office for a salary less than that prescribed by state law) was void and unenforceable. In *Brown*, this Court said:

> When a State seeks to restrict directly the offer of ideas by a candidate to the voters, the First Amendment surely requires that the restriction be demonstrably supported by not only a legitimate state interest, but a compelling one, and that the restriction operate without unnecessarily circumscribing protected expression.

456 U.S. at 53, 102 S. Ct. at 1529.

Brown provides a starting point for the consideration of this case. From both a logical and practical point of view, imposing a substantial state fee or tax on the opportunity of candidacy effectively "seeks to restrict directly the offer of ideas by a candidate to voters," condemned by *Brown*, because it eliminates the offer of *all* ideas that would be forthcoming from the aspiring candidates who are unable or unwilling to pay the fee. Hence, on first blush, this case would seem to be controlled by *Brown*.[3]

Nevertheless, this Court has also acknowledged that the states have legitimate governmental interests to be served by placing reasonable restrictions on ballot access. Indeed, this Court's decisions in both *Bullock v. Carter*, 405 U.S. 134, 92 S. Ct. 849, 31 L. Ed. 2d 92 (1972) and *Lubin v. Panish*, 415 U.S. 709, 94 S. Ct.

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3. This Court has acknowledged that "The exclusion of candidates also burdens voters' freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying-point for like-minded citizens." *Anderson v. Celebrezze*, 460 U.S. 780, 787, 103 S. Ct. 1564, 1569 (1983).

1315, 39 L. Ed. 2d 702 (1974) acknowledged that reasonable filing fees do not *per se* impermissibly infringe First Amendment interests. Nevertheless, unlike the fees challenged in this case, the fees in *Bullock* and *Lubin* were imposed by the states in question to serve some important state function IN CONNECTION WITH CONDUCTING THE ELECTION IN WHICH THE PERSON REQUIRED TO PAY THE FEE WAS A PARTICIPANT. By contrast, the fees challenged herein that the state of Florida required Petitioners Doughtie and Grube to pay were not imposed or used to regulate or conduct the non-partisan judicial elections in which they participated, but were imposed and used to finance the partisan political campaigns of candidates for Governor and executive Cabinet. In short, the challenged fees were not imposed or used by the state to defray the state's cost of running any election, but were used by political candidates in other elections to pay for their partisan political campaigns.

Bullock involved an action brought by impecunious candidates to raise an equal protection challenge to a Texas filing fee statute that offered aspirants to candidacy no substitute method of qualifying as an alternative to the payment of the fee. In *Bullock*, this Court acknowledged that "the initial and direct impact of finding fees is felt by the aspirant for office," 405 U.S. at 142, 92 S. Ct. at 855, but had no occasion to characterize the exact nature of the First Amendment interest involved. Nevertheless, in *Bullock*, this Court did identify three specific state interests that could justify the imposition of a reasonable filing fee in a proper case:

> First, "a State has a legitimate interest in regulating the number of candidates on the ballot," 405 U.S. at 146, 92 S. Ct. at 857;
>
> Second, "a State has an interest, if not a duty, to protect the integrity of its political processes from frivolous and fraudulent candidates," *id.*, and,

> Third, "to relieve the State Treasury of the cost of conducting the primary elections . . . is a legitimate state objective." 405 U.S. at 147, 92 S. Ct. at 858.

Hence, *Bullock* seems to have established that one aspect of the constitutional reasonableness of a filing fee is that it perform a proper function in connection with *the election in which the aspirant desires to participate.*

In *Lubin v. Panish,* 415 U.S. 709, 94 S. Ct. 1315, 39 L. Ed. 2d 702 (1974), this Court reviewed an equal protection challenge to filing fees made by indigent aspirants to candidacy. *Lubin* not only reconfirmed that a state may justify filing fees in terms of proper state interests, such as to test the "seriousness" of a candidate and to keep the number of candidates on a ballot to a reasonable size, 415 U.S. at 715, 94 S. Ct. at 1319, but also explicitly acknowledged that the constitutionally protected interests at stake included both the interests of the electorate to choose among an array of candidates and the political opportunity interests of the candidates themselves. In *Lubin*, this Court stated:

> This legitimate state interest [*i.e.*, managing the ballot size] must be achieved by a means that does not unfairly or unnecessarily burden either a minority candidate's or an *individual candidate's equally important interest in the continued availability of political opportunity.* The interests involved are not merely those of parties or individual candidates; the voters can assert their preferences only through candidates or parties or both and it is this broad interest that must be weighed in the balance. *The right of a party or an individual to a place on a ballot is entitled to protection* and is intertwined with the rights of voters.

415 U.S. at 715, 94 S. Ct. at 1319 (emphasis supplied).

In sum, *Bullock* and *Lubin* establish three critical points:

1. Filing fees imposed by a state as a condition for qualifying to become a candidate for elective office affect First Amendment interests of the aspirants for office.

2. Certain state interests may justify the state to impose filing fees in a reasonable amount.

3. To date, the only state interests that this Court has acknowledged that may justify a filing fee that burdens the opportunity of candidacy are those that pertain directly to conducting the election in which the aspirant wishes to participate; namely, keeping the ballot to a manageable size, excluding fraudulent and frivolous candidates, and defraying the state's cost in running primary elections.

This case raises this important First Amendment issue that has not been addressed by this Court in its previous decisions:

> MAY A STATE IMPOSE A SUBSTANTIAL FILING FEE UPON AN ASPIRANTS' FIRST AMENDMENT INTERESTS IN BECOMING A CANDIDATE FOR JUDICIAL OFFICE TO SATISFY THE STATE'S INTEREST, HAVING NOTHING TO DO WITH CONDUCTING OR REGULATING THE ELECTION TO WHICH THE ASPIRANT ASPIRES, TO RAISE MONEY TO BE USED TO FINANCE THE POLITICAL CAMPAIGNS OF PARTISAN CANDIDATES FOR OFFICES OF GOVERNOR AND EXECUTIVE CABINET?

As stated in "Facts Material to the Questions Presented" section of this petition, the district court and the Court of Appeals stated that Petitioners Doughtie and Grube were merely complaining about an appropriation and were foreclosed from a remedy by this Court's decision in *Buckley v. Valeo,* 420 U.S. 134, 92 S. Ct. 849, 31 L. Ed. 2d 92 (1972). With due respect to these courts, Petitioners Doughtie and Grube do not and have not challenged either the power of the state to impose a reasonable filing fee for the purposes acknowledged by this Court in *Bullock* and *Lubin,* and do not and have not challenged the power of the state to make appropriations from constitutionally obtained funds to provide public financing for political campaigns. In one sense, this case presents an opportunity for this Court to consider whether the constitutional principle applied by the Court in the "dormant commerce power" context in *West Lynn Creamery Inc. v. Healy,* __ U.S. __, 114 S. Ct. 2205 (1994), also applies in the First Amendment context. In *Healy,* this Court held that a milk assessment that a state levied equally on both out-of-state on in-state milk, which might have been valid alone, impermissibly violated the dormant commerce power when the state directly linked the assessment to a subsidy that was paid by the state only to in-state milk procedures, which subsidy might also have been valid alone. In short, *Healy* holds that when a state links two actions, each of which might be constitutional if enacted independently, to produce an unconstitutional combination, this Court will examine the constitutional aspects of the linkage. Both of the courts below refused to examine the linkage in this case.

Accordingly, this case presents to this Court the novel question of whether a filing fee that burdens the opportunity for candidacy, which might have been valid if imposed to regulate or conduct the election which the aspirants desired to participate in, impermissibly burdens First Amendment interests of political opportunity when the state directly linked the imposition of the fee to providing financial support for the political campaigns of

candidates for other offices, which public financing programs might have been valid if funded from independently obtained general revenues.

Finally, this Court should know that the scheme approved by the courts below not only is amenable to proliferation throughout the states but has already been approved in related contexts by the courts of Florida, which have cited the opinion below and this Court's *Buckley v. Valeo* decision as controlling authority. *See McNamee v. Smith*, __ So. 2d __ (Fla. 1st DCA 1994), 19 Fla. L. Weekly D1268 and *Boudreau v. Winchester*, __ So. 2d __ (Fla. 4th DCA 1994), 19 Fla. L. Weekly D1247.

II.

WHAT STANDARD OF JUDICIAL SCRUTINY APPLIES TO FILING FEES IMPOSED UPON ASPIRANTS FOR ELECTIVE JUDICIAL OFFICE FOR THE PURPOSE OF RAISING REVENUE TO FINANCE THE PARTISAN POLITICAL ELECTION CAMPAIGNS OF CANDIDATES FOR GOVERNOR AND EXECUTIVE CABINET OFFICES?

As demonstrated above, Ch. 91-107 placed a substantial filing fee on Petitioners Doughtie and Grube's access to the elective judicial ballot for purposes that had nothing to do with regulating or conducting the election they aspired to participate in (*i.e.*, funding the partisan political campaigns of candidates for the offices of Governor and Executive Cabinet). Despite the facts that the Florida Legislature acknowledged in Ch. 91-107 that the measure touched upon First Amendment rights and also set forth the state purposes that it thought justified the burdens (Preamble, Ch. 91-107, Appendix D, 25a), neither the opinion of the district court nor of the Court of Appeals undertook to scrutinize the justifications proffered by the state or to balance them against the

infringement of Petitioners Doughtie and Grube's First Amendment interests. Instead, both lower courts merely acquiesced in Respondent Smith's assertion that this case involves only a challenge to an appropriation and that such a challenge is foreclosed by *Buckley v. Valeo*. (*See* 19 F.3d at 5, Appendix A, 4a).

No decision of this Court has ever held that courts may uphold infringements of protected First Amendment interests without undertaking any independent scrutiny to balance the respective interests of the state and the challengers. Although *Bullock v. Carter* acknowledged that not all ballot access restrictions invoke the ultimate "strict scrutiny — compelling state interest" test, this Court did hold in *Bullock* that ballot access restrictions (*i.e.*, filing fees), even when applied to satisfy a legitimate state interest (*i.e.*, limiting the ballot size, weeding out frivolous and fraudulent candidates, and defraying the state's cost of running primary elections), "must be closely scrutinized and found necessary to the accomplishment of legitimate state objectives in order to pass constitutional muster." 405 U.S. at 144, 92 S. Ct. at 856. This is apparently also the test that this Court applied in *Lubin*. By contrast, in *Brown v. Hartlage*, 456 U.S. 45, 71 L. Ed. 2d 752, this Court held that a state statute that infringes a candidate's right to offer ideas to the electorate "requires that the restriction be demonstrably supported not only by a legitimate state interest, but a compelling one, and that the restriction operate without unnecessarily circumscribing protected expression." 456 U.S. at 53, 102 S. Ct. at 1529.

Although the filing fee challenged by Petitioners herein may result in infringing aspirants' right to "offer ideas" by eliminating those aspirants who are unable or unwilling to pay the fee, hence invoking the *Brown* standard, it may also be treated as a ballot access measure invoking the lesser *Bullock* standard. In sum, therefore, this case presents this question to be resolved by this Court.

WHAT STANDARD OF JUDICIAL REVIEW MUST BE APPLIED TO TEST SUBSTANTIAL FILING FEES IMPOSED BY A STATE TO SERVE PURPOSES HAVING NOTHING TO DO WITH REGULATING OR CONDUCTING THE ELECTION THAT THE ASPIRANTS WHO ARE REQUIRED TO PAY THE FEES SEEK TO PARTICIPATE IN?

The choices seem to include:

(a) Deference to the state as done by the courts below; or

(b) The "close scrutiny — found necessary" test of *Bullock*; or

(c) The "strict scrutiny - compelling state interest" test of *Brown*.

CONCLUSION

For reasons stated herein, Petitioners Doughtie and Grube respectfully submit that this petition raises important First and Fourteenth Amendment issues pertaining to the vital opportunity of political candidacy unlike any ever addressed by this Court. Specifically, this Court has never reviewed the legitimacy of a substantial fee imposed on aspirants for elective office for the purpose of raising funds to satisfy a state purpose that has nothing to do with the state's interest in regulating or conducting the election in which the aspirants desire to participate. Nor has this Court ever examined the constitutionality of a state's linking of two programs, each of which is arguable constitutional if enacted independently of the other, in a single statute that is intended to place a burden on political opportunity as a means of achieving

some independent state purpose. In *West Lynn Creamery, Inc. v. Healy, supra,* this Court condemned this practice as it applied to the dormant commerce power. *A fortiori,* is should be condemned in the First and Fourteenth Amendment context.

Accordingly, Petitioners Doughtie and Grube respectfully submit that this Court should grant this petition and issue a Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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APPENDIX A — OPINION OF THE COURT OF APPEALS

Joseph W. Little, Plaintiff,

Honorable Karl B. Grube, Honorable Nath C. Doughtie,
Plaintiffs-Appellants,

v.

FLORIDA DEPARTMENT OF STATE, Jim Smith, Secretary,
Defendants-Appellees.

No. 93-2848.

United States Court of Appeals;
Eleventh Circuit.

April 15, 1994.

* * *

Robert C. Widman, Sarasota, FL, for plaintiffs-appellants.

Joseph W. Little, pro se.

Louis F. Hubener, Office of Atty. Gen., Tallahassee, FL, for defendants-appellees.

Appeal from the United States District Court for the Northern District of Florida.

Before ANDERSON and BIRCH, Circuit Judges, and ALBRITTON*, District Judge.

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* Honorable W. Harold Albritton, III, U.S. District Judge for the Middle District of Alabama, sitting by designation.

Appendix A

PER CURIAM:

The only issue raised by appellant in this appeal is a challenge to the constitutionality of the filing fee.** We reject this challenge for the following reasons articulated by Judge Maurice M. Paul in his July 21, 1992, opinion which granted summary judgment for appellee:

FACTS

A person who seeks elected judicial office in Florida must comply with certain conditions precedent before he/she becomes eligible to campaign for, and be elected to, the sought-after position. *See* Fla.Stat. chs. 105.011-.10 (1991). One of these conditions forms the basis of this suit.

> Each candidate qualifying for election to judicial office, except write-in judicial candidates, shall, during the time for qualifying, pay to the officer with whom he qualifies a qualifying fee, which shall consist of a filing fee and an election assessment, or qualify by the alternative method.

Fla.Stat. ch. 105.031(3) (1991).

So for a person to run for elected judicial office, he/she must either pay the filing fee or qualify by the alternative method. The

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** In the district court, appellants also challenged the necessity of filing an oath in order to qualify for the alternative to paying the filing, fee, i.e., inability to pay without imposing an undue burden on resources. The district court struck the oath requirement, thus holding that the statement regarding ability to pay could be made without oath. Appellees did not cross-appeal this judgment against them.

alternative method allows a candidate to qualify without paying the fee, so long as he/she (a) submits a petition with a specified number of signatures, and (b) files an oath with the proper official stating that he/she is unable to pay the fee without imposing an undue burden on his/her resources. Fla.Stat. ch. 105.035 (1991).

Plaintiffs argue that the filing fee itself violates both the First and Fourteenth Amendments to the United States Constitution. They also attack the oath requirement as violative of the Equal Protection Clause of the Fourteenth Amendment.[1]

DISCUSSION

(1) The Motions for Summary Judgment

Plaintiffs (doc. 11) and defendant (doc. 21) have filed cross-motions for summary judgment. Plaintiffs have separately filed a response to defendant's motion for summary judgment (doc. 27).

• • • • •

(a) The Filing Fee[2]

"The amount of the filing fee is 4.5% of the annual salary of the office sought." Fla.Stat. ch. 105.031(3) (1991). It is undisputed that a filing fee as a part of the qualifications for seeking elected

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1. Footnote omitted.

2. In addition to the filing fee, candidates for judicial office, unless using the alternative qualifying method, must also pay an election assessment fee. Fla.Stat. ch. 105.031(3) (1991). "This assessment is not challenged in this action." Doc. 11 (Plaintiffs' Motion for Summary Judgment) at 3.

office does not run afoul of the constitution where, as in Florida, an alternative method is also available. *Bullock v. Carter,* 405 U.S. 134, 145, 92 S.Ct. 849, 857 [31 L.Ed.2d 92] (1972). Additionally, in *Adams v. Askew* a filing fee of up to five percent (5%) of the salary of the state office sought was upheld against various constitutional challenges. 511 F.2d 700, 704-05 (5th Cir. 1975).[3] The existence of this fee, as well as its amount, both pass constitutional muster.

Plaintiffs' true challenge is to the manner in which the funds are allocated. They argue that because the allocation of the fee paid by judicial candidates differs from that for non-judicial candidates, the apportionment violates the guarantees of Equal Protection. Plaintiffs continue that the chosen appropriation violates their rights under the First Amendment.

Both arguments are without merit. The Supreme Court rejected a challenge quite similar to this one in *Buckley v. Valeo,* 424 U.S. 1, 96 S.Ct. 612 [46 L.Ed.2d 659] (1976). Plaintiffs in *Buckley* challenged the election campaign check-off provision on tax returns,[4] and asserted that they should be able to designate which candidate their donation would be used to support. In rejecting this challenge, the Court wrote the following:

> The fallacy of appellants' argument is therefore apparent; every appropriation made by Congress uses public money in a manner to

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3. In *Bonner v. City of Prichard,* 661 F.2d 1206, 1209 (11th Cir.1981) (*en banc*), the court adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981.

4. These provisions allow taxpayers, at their option, to donate money from their taxes to an election campaign fund.

> which some taxpayers object. . . . Congress need not provide a mechanism for allowing taxpayers to designate the means in which their particular tax dollars are spent.

Id. at 669 & n. 125, 91 S.Ct. at 91-92 & n. 125 [at 91-92 & n. 125, 96 S.Ct. at 669 & n. 125].

The situation here is virtually identical. Money in the form of filing fees is deposited into general revenue for use therein and in the campaign trust fund. Once the existence and amount of the fee is found to pass constitutional muster, as set forth above, this appropriation is the only matter that remains for objection. The above makes clear that such an objection will not be heard.

Plaintiffs attempt to distinguish this situation from *Buckley* on the grounds that this filing fee is involuntary, whereas the check-off is voluntary. This attempted distinction fails on two (2) separate grounds. First, not every candidate seeking to run for office *must* pay the filing fee. The Supreme Court has expressly held that an alternative to payment of the filing fee *must* be provided, *Lubin v. Parrish [Panish],* 415 U.S. 709, 94 S.Ct. 1315 [39 L.Ed.2d 702] (1974), and Florida has followed this mandate. *See* Fla.Stat. ch. 105.-035 (1991). Payment of the fee, then, is not involuntary.[5]

Secondly, the holding in *Buckley* was not founded or dependent on a characterization of the check-off donation as voluntary. Absent such a showing, this asserted distinction, while possibly true in fact, *see supra* note 5, in an insufficient ground for this court to hold contrary to *Buckley.*

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5. This holding is strengthened by the remainder of this order dealing with the oath requirement as part of the alternative qualifying method. [Remainder of footnote omitted].

In short, the challenges plaintiffs raise to this filing fee have been before raised and rejected, and need not be revisited and reversed. Plaintiffs' Motion for Summary Judgment as it pertains to the filing fee is DENIED. Defendant's Motion for Summary Judgment as to the same is GRANTED.

APPENDIX B — ORDER OF THE DISTRICT COURT FILED JULY 23, 1992

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

CASE NO. TCA 92-40122-MMP

JOSEPH W. LITTLE, THE HONORABLE KARL B. GRUBE, County Judge, and THE HONORABLE NATH C. DOUGHTIE, Circuit Judge,

Plaintiffs,

v.

JIM SMITH, Secretary of State of Florida,

Defendant.

ORDER

This cause is before the court on several motions, oral argument on all being heard June 19, 1992, in Tallahassee, Florida. Each motion will be addressed in turn.

PROCEDURAL HISTORY

Plaintiffs originally filed this suit in the Circuit Court for the Second Judicial Circuit, in and for Leon County, Florida. Defendant filed a Petition of Removal with this court March 31, 1992 (doc. 1).

Because the suit alleges violations of a claim or right arising

under the Constitution of the United States, this court is vested with original, and, therefore, removal jurisdiction over this cause. *See* 28 U.S.C. §§ 1331, 1343(3), 1441(a)-(c). The petition for removal was timely filed, and has otherwise been made in compliance with all procedural requirements. *See* 28 U.S.C. § 1441. This case, then, is properly in this court. No party contests this conclusion.

In their original complaint, plaintiffs brought claims under both the Florida and Federal Constitutions. Plaintiffs have since filed a Motion to Dismiss Claims Made Under the Florida Constitution (doc. 26) pursuant to Rule 41(a)(2), Federal Rules of Civil Procedure. No response to this motion has been filed, and the time for doing so has expired.

The Motion to Dismiss (doc. 26) is GRANTED, and all claims under the Florida Constitution are DISMISSED WITHOUT PREJUDICE from this case. This order shall address only those claims brought under the Federal Constitution.

FACTS

A person who seeks elected judicial office in Florida must comply with certain conditions precedent before he/she becomes eligible to campaign for, and be elected to, the sought-after position. *See* Fla. Stat. chs. 105.011 -.10 (1991). One of these conditions forms the basis of this suit.

> Each candidate qualifying for election to judicial office, except write-in judicial candidates, shall, during the time for qualifying, pay to the officer with whom he qualifies a qualifying fee, which shall consist

> of a filing fee and an election assessment, or qualify by the alternative method.

Fla. Stat. ch. 105.031(3) (1991).

So for a person to run for elected judicial office, he/she must either pay the filing fee or qualify by the alternative method. The alternative method allows a candidate to qualify without paying the fee, so long as he/she (a) submits a petition with a specified number of signatures, and (b) files an oath with the proper official stating that he/she is unable to pay the fee without imposing an undue burden on his/her resources. Fla. Stat. ch. 105.035 (1991). Plaintiffs argue that the filing fee itself violates both the First and Fourteenth Amendments to the United States Constitution. They also attack the oath requirement as violative of the Equal Protection Clause of the Fourteenth Amendment.[1]

DISCUSSION

(1) The Motions for Summary Judgment

Plaintiffs (doc. 11) and defendant (doc. 21) have filed cross-motions for summary judgment. Plaintiffs have separately filed a response to defendant's motion for summary judgment (doc. 27).

As an initial matter, defendant has challenged the standing of these plaintiffs. A Stipulated Motion for Dismissal as to one of the original plaintiffs, Joseph W. Little, has been filed with this court

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1. Although mentioned several times, *see* attachment 1 (Complaint) to doc. 1 (Petition for Removal) at 9 & doc. 27 (Plaintiffs' Reply to Defendant's Motion for Summary Judgment) at 11, the First Amendment is not forwarded properly as an additional challenge to the oath requirement, and, as such, will not be addressed.

(doc. 23). Pursuant to Rule 41(a)(2), Federal Rules of Civil Procedure, this motion is GRANTED, and Joseph W. Little is DISMISSED WITH PREJUDICE from this case as a party plaintiff. This dismissal is expressly WITHOUT PREJUDICE to the rights of defendant to seek costs and attorneys' fees against Joseph W. Little under Rule 11, Federal Rules of Civil Procedure, 42 U.S.C. § 1988, or any other appropriate authority.

The two (2) remaining plaintiffs are current judges who will be seeking re-election. Qualification requirements certainly affect these persons in a manner sufficient to give them a real and personal stake in the outcome of this case, and thereby grant them standing. *See Baker v. Carr,* 369 U.S. 186, 204, 82 S. Ct. 691, 703 (1962).

(a) The Filing Fee[2]

"The amount of the filing fee is 4.5% of the annual salary of the office sought." Fla. Stat. ch. 105.031(3) (1991). It is undisputed that a filing fee as a part of the qualifications for seeking elected office does not run afoul of the constitution where, as in Florida, an alternative method is also available. *Bullock v. Carter,* 405 U.S. 134, 145, 92 S. Ct. 849, 857 (1972). Additionally, in *Adams v. Askew* a filing fee of up to five percent (5%) of the salary of the state office sought was upheld against various constitutional challenges. 511 F.2d 700, 704-05 (5th Cir. 1975).[3] The existence of this fee, as well as its amount, both pass constitutional muster.

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2. In addition to the filing fee, candidates for judicial office, unless using the alternative qualifying method, must also pay an election assessment fee. Fla. Stat. ch. 105.031(3) (1991). "This assessment is not challenged in this action." Doc. 11 (Plaintiffs' Motion for Summary Judgment) at 3.

3. In *Bonner v. City of Prichard,* 661 F.2d 1206, 1209 (11th Cir. 1981) (en

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Appendix B

Plaintiffs' true challenge is to the manner in which the funds are allocated. They argue that because the allocation of the fee paid by judicial candidates differs from that for nonjudicial candidates, the apportionment violates the guarantees of Equal Protection. Plaintiffs continue that the chosen appropriation violates their rights under the First Amendment. Both arguments are without merit. The Supreme Court rejected a challenge quite similar to this one in *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612 (1976). Plaintiffs in *Buckley* challenged the election campaign check-off provision on tax returns,[4] and asserted that they should be able to designate which candidate their donation would be used to support. In rejecting this challenge, the Court wrote the following:

> The fallacy of appellants' argument is therefore apparent; every appropriation made by Congress uses public money in a manner to which some taxpayers object. . . . Congress need not provide a mechanism for allowing taxpayers to designate the means in which their particular tax dollars are spent.

Id. at 669 & n. 125, 91 S. Ct. at 91-92 & n. 125.

The situation here is virtually identical. Money in the form of filing fees is deposited into general revenue for use therein and in the campaign trust fund. Once the existence and amount of the fee is found to pass constitutional muster, as set forth above, this

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banc), the court adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981.

4. These provisions allow taxpayers, at their option, to donate money from their taxes to an election campaign fund.

appropriation is the only matter that remains for objection. The above makes clear that such an objection will not be heard.

Plaintiffs attempt to distinguish this situation from *Buckley* on the grounds that this filing fee is involuntary, whereas the check-off is voluntary. This attempted distinction fails on two (2) separate grounds. First, not every candidate seeking to run for office *must* pay the filing fee. The Supreme Court has expressly held that an alternative to payment of the filing fee *must* be provided, *Lubin v. Parrish*, 415 U.S. 709, 94 S. Ct. 1315 (1974), and Florida has followed this mandate. *See* Fla. Stat. ch. 105.035 (1991). Payment of the fee, then, is not involuntary.[5]

Secondly, the holding in *Buckley* was not founded or dependent on a characterization of the check-off donation as voluntary. Absent such a showing, this asserted distinction, while possibly true in fact, *see supra* note 5, is an insufficient ground for this court to hold contrary to *Buckley*. In short, the challenges plaintiffs raise to this filing fee have been before raised and rejected, and need not be revisited and reversed. Plaintiffs' Motion for Summary Judgment as it pertains to the filing fee is DENIED. Defendant's Motion for Summary Judgment as to the same is GRANTED.

(b) The Oath

As set forth above in the recitation of facts, a person seeking candidacy for elected judicial office in Florida need either pay the

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5. This holding is strengthened by the remainder of this order dealing with the oath requirement as part of the alternative qualifying method. If the oath remained in place, it is arguable, though not a foregone conclusion, that the fee is involuntary as it affects those who could not state under oath that it imposed upon them an undue burden.

filing fee or qualify by the alternative method. This alternative method has two (2) requirements. First, the potential candidate must collect a specified number of signatures on a petition. *Fla. Stat.* ch. 105.035 (1991). This portion of the alternative method is not being challenged. Second, a person seeking to qualify by the alternative method must

> file an oath with the officer before whom the candidate would qualify for the office stating that he intends to qualify for the office sought and stating that he is unable to pay the qualifying fee for the office without imposing an undue burden on his resources or on resources otherwise available to him.

Fla. Stat. ch 105.035(1) (1991).

A similar alternative qualifying process is available to non-judicial candidates who wish to qualify for an election without paying the filing fee. *See Fla. Stat.* ch. 99.095 (1991). For these candidates, however, there is no requirement that they submit an oath certifying that payment of the fee would constitute an undue burden. *Id.* This differential treatment of judicial and non-judicial candidates forms the basis for plaintiffs' Equal Protection challenge.

Equal Protection analysis begins with the proposition that similarly situated persons must be treated alike as far as state action or inaction is concerned. If like persons are to be treated differently, there must exist valid reason for so doing. The nature of the reason for this treatment and the standard of proof to which it will be held are dependent on the group being singled out for differential treatment, and the right being affected.

Appendix B

The body of persons in this case is those persons seeking candidacy for elected office in Florida. As an initial matter, all these persons may be assumed to be alike, and to merit equal treatment in the eyes of the state. The group being singled out is composed of those persons seeking candidacy for judicial office.

It has long been recognized that candidates for elected judicial office may be viewed and treated differently from nonjudicial candidates in certain respects. In *Clements v. Fashing*, the Supreme Court expressly recognized this fact. 457 U.S. 957, 102 S. Ct. 2836 (1982). At issue in *Clements* was Texas' "resign to run" laws. These laws prohibit state judges from eligibility to run for other office during their term of office,[6] while imposing no like restriction on non-judicial office holders. Plaintiff state judges brought a suit and alleged a violation of Equal Protection.

The court wrote the following regarding the standard to be applied in cases such as this one:

> The Equal Protection Clause allows the States considerable leeway to enact legislation that may appear to affect similarly situated people differently. Legislatures are ordinarily assumed to have acted constitutionally. Under traditional equal protection principles, distinctions need only be drawn in such a manner as to bear some rational relationship to a legitimate state end. Classifications are set aside only if they are based solely on reasons totally unrelated to the pursuit of the State's

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6. The laws imposed these same restrictions on justices of the peace and certain other office holders.

> goals and only if no grounds can be conceived to justify them. We have departed from traditional equal protection principles only when the challenged statute places burdens on "suspect classes" of persons or on a constitutional right that is deemed to be fundamental.

Id. at 962-63, 102 S. Ct. at 2843 (citations omitted).

The class here, candidates for judicial office, is by no means "suspect." Inasmuch as the reason for different treatment must be justified in relation to the group being singled out, then, in this case it will be subject to the rational relationship test; that is, there must be a rational relation between the regulation and a legitimate state end.

Additionally, candidacy for office is not a fundamental right. *Id.* at 962, 102 S. Ct. at 2843. Inasmuch as the reason for different treatment must be justified in relation to the right being limited or infringed, then, the standard is identical. *Bullock v. Carter,* 405 U.S. 134, 144, 92 S. Ct. 849, 856 (1972) (regulations affecting candidate's access to the ballot must be "reasonably necessary to the accomplishment of legitimate state objectives in order to pass constitutional muster").

The state offers several justifications for imposing the oath requirement on judicial candidates and not on all others. "If one may qualify simply by furnishing signatures, it is more likely that more candidates with less to offer will appear on the ballot." Doc. 21 (Defendant's Motion for Summary Judgment) at 24. There are several problems with this justification. First, as a matter of logic, less qualified persons could simply pay the fee and be placed on the

ballot. There is no reason to believe that persons with less money are somehow less qualified. Second, the oath requirement does not serve to somehow weed out these less qualified persons. It simply makes sure that the fee would impose an undue burden on their finances, an assurance in no way related to qualification.

The state also argues that it "may rightly expect an incumbent judge . . . to devote his [or her] full-time attention to judicial duties and not to soliciting signatures and perhaps suggesting to those who are solicited that he [or she] believes in this or that when he [or she] is on the bench." *Id.* at 25 (note omitted). Once again, this argument suffers from numerous defects.

First, if an incumbent judge is to proceed by petition, the oath requirement does nothing to minimize the time that must be spent collecting signatures. In fact, if the oath requirement does anything to time management, it adds to the time necessary to qualify: the candidate must take the time, albeit minimal, to complete and submit the oath.

Second, any improper suggestions a potential candidate might make when collecting signatures would properly be considered under an ethical investigation, and would in no way be deterred by the oath.

One other deficiency in this requirement becomes evident when looking at the practical effect of the oath. A judicial candidate must state under oath that to pay the filing fee would impose an undue financial burden on him/her or the resources available to him/her. The effect, then, would be that the wealthier incumbent judges would pay the fee,[7] and, assuming as true the

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7. Even in this assumption there exists a fundamental fallacy. A person seeking

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argument of the state, spend a greater amount of time tending to their duties on the bench rather than collecting signatures. The less wealthy candidates would spend their time collecting signatures. If the concern of the state is for time spent on the bench, a requirement should be fashioned that would save time for all incumbents, not just those who are fortunate enough to have an appreciable amount of wealth.

In sum, there is no rational reason for the existence of this oath requirement with respect to candidates for judicial office, while the same was recently rescinded as it relates to all candidates for non-judicial elected offices. Plaintiffs' Motion for Summary Judgment as it relates to the oath requirement is GRANTED. Defendant's Motion for Summary Judgment as to the same is DENIED.

(2) The Motion for Fees and Costs

Defendant has filed a Motion for Attorneys' Fees Pursuant to Rule 11, Federal Rules of Civil Procedure (doc. 29), to which plaintiffs' have filed a Response (doc. 32). As to plaintiffs Judge Grube and Judge Doughtie, this motion is DENIED. These plaintiffs have standing to bring this challenge, one which is certainly meritorious. Also, inasmuch as plaintiffs' response to this motion requests costs and fees under Rule 11, it is DENIED.

As to Joseph W. Little, however, a question as to this suit being

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candidacy who may be considered by most to be wealthy may determine, in their own judgment, that payment of the fee would impose an undue burden on their finances. The effects of such a decision would be uncertain. There is no enforcement mechanism in the statute, and no objective measure by which to determine what is unduly burdensome. Apparently, *any* candidate could submit the oath upon a good faith subjective belief.

frivolous remains. Although the cause itself is meritorious, Mr. Little's participation in the suit when he lacked standing to do so may be frivolous for purposes of Rule 11 analysis.

Therefore, within twenty (20) days of this order being entered on the docket, the parties shall simultaneously submit memoranda to this court addressing Rule 11 sanctions against only Mr. Little. The court shall at that time take the matter under consideration with no further pleadings.

This filing does not affect the right of any party to seek fees and costs under other authority. These filings, such as one for fees under 42 U.S.C. § 1988, must be made independently.

CONCLUSION

With the foregoing as authority, this court orders as follows:

(1) Plaintiffs' Motion to Dismiss Claims Made Under the Florida Constitution is GRANTED (doc. 26). All claims brought under the Florida Constitution are DISMISSED WITHOUT PREJUDICE.

(2) The Stipulated Motion for Dismissal of Joseph W. Little as party plaintiff is GRANTED (doc. 23). Joseph W. Little is DISMISSED WITH PREJUDICE as a plaintiff to this case. This dismissal is WITHOUT PREJUDICE to defendant's right to pursue costs and fees from Mr. Little.

(3) Plaintiffs' Motion for Summary Judgment (doc. 11) as it relates to the filing fee requirement is DENIED, and defendant's Motion for Summary Judgment (doc. 21) as to the same is GRANTED.

Appendix B

(4) Plaintiffs' Motion for Summary Judgment (doc. 11) as it relates to the oath requirement is GRANTED, and defendant's Motion for Summary Judgment (doc. 21) as to the same is DENIED. That portion of the alternative qualification method for judicial candidates that requires an oath of undue burden is declared unconstitutional as in violation of the principles of Equal Protection.

(5) Defendant's Motion for Rule 11 Sanctions (doc. 29) is DENIED as to plaintiffs Judge Grube and Judge Doughtie, and DEFERRED as to plaintiff Little. Plaintiffs' counter-motion for sanctions (doc. 32) is DENIED. This court will rule on the Motion for Sanctions as to plaintiff Little upon submission of the memoranda discussed immediately above.

DONE AND ORDERED this 21st day of July, 1992.

s/ Maurice M. Caul
United States District Judge

APPENDIX C — ORDER OF COURT OF APPEALS DENYING PETITIONERS' PETITION FOR REHEARING AND SUGGESTION OF REHEARING EN BANC FILED JUNE 24, 1994

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 93-2848

JOSEPH W. LITTLE,

Plaintiff,

HONORABLE KARL B. GRUBE, HONORABLE NATH C. DOUGHTIE,

Plaintiffs-Appellants,

versus

FLORIDA DEPARTMENT OF STATE, JIM SMITH, SECRETARY,

Defendants-Appellees.

On Appeal from the United States District Court for the Northern District of Florida

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC

Before: ANDERSON and BIRCH, Circuit Judges and ALBRITTON, District Court Judge

Appendix C

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

* * *

ENTERED FOR THE COURT:
s/ illegible
UNITED STATES CIRCUIT JUDGE

APPENDIX D — CHAPTER 91-107 LAWS OF FLORIDA

CHAPTER 91-107*

HOUSE BILL NO. 2251

An act relating to elections; amending s. 99.092, F.S.; increasing the filing fee for persons seeking to qualify for nomination or election to certain offices; providing for a specified percentage of the fee to be transferred to the Election Campaign Financing Trust Fund; amending s. 99.093, F.S.; increasing the election assessment for municipal candidates; providing for a specified percentage of the assessment amount to be transferred to the Election Campaign Financing Trust Fund; creating s. 99.0965, F.S.; providing signature requirements for ballot position in apportionment years; amending s. 99.103, F.S.; providing conforming changes relating to the increase in filing fees; amending s. 105.031, F.S.; increasing the qualifying fee for certain judicial candidates; providing for a specified percentage of the fee to be transferred to the Election Campaign Financing Trust Fund; amending s. 106.04, F.S.; excluding interest income from the percentage requirement for qualification of committees of continuous existence; requiring such committees to remit a portion of certain contributions to the Division of Elections for deposit into the Election Campaign Financing Trust Fund; amending s. 106.07, F.S.; revising the reporting dates for certain candidates; requiring political committees to remit a portion of certain contributions to the filing officer for deposit into the Election Campaign Financing Trust Fund; amending s. 106.29, F.S.; requiring state and county executive committees of each political party to remit a portion of certain contributions to the filing officer for deposit into the Election Campaign Financing Trust Fund; amending s. 106.011,

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*** NOTE: Text appearing in bold italics designates new language of Florida Law added by Chapter 91-107; Text appearing in bracketed bold italics designates portions of repealed Florida Law deleted by Chapter 91-107.**

F.S.; redefining "contribution" and "independent expenditure"; amending s. 106.021, F.S.; restricting a candidate who is changing the designation of office sought from using campaign funds of the prior candidacy for the subsequent candidacy; requiring certain notice; clarifying that candidates for the office of Governor and Lt. Governor are considered a single candidate for the purpose of appointing a campaign treasurer and designating a campaign depository; amending s. 106.08, F.S.; revising the limitations on contributions to candidates and political committees; providing a separate limit on contributions by minors; providing limitations on contributions from political parties; providing penalties; reenacting ss. 106.04(5), 106.075(2), 106.19(1)(a), and 106.29(4), F.S., relating to contributions by committees of continuous existence, contributions to pay loans, penalty for acceptance of contributions in excess of limits, and contributions by executive committees, to incorporate the amendment to s. 106.08, F.S., in references thereto; creating s. 106.085, F.S.; requiring persons or groups making certain independent expenditures on behalf of or in opposition to any candidate to give notice thereof; providing a penalty; amending s. 106.11, F.S.; removing the requirement that "thank you" advertising must be placed in the communications media to be a qualified expenditure after a candidate withdraws, becomes unopposed, or is eliminated or elected; amending s. 106.141, F.S.; revising requirements for disposing of surplus funds; amending s. 106.143, F.S.; allowing for political advertisements to be provided in a language other than English; amending s. 106.15, F.S.; prohibiting the making, solicitation, and knowing acceptance of campaign contributions in buildings owned by a governmental entity; providing an exception; providing a penalty; amending s. 106.25, F.S.; relating to confidentiality of complaints filed with the Florida Elections Commission, to provide that complainants are not bound thereby; amending s. 106.32, F.S.; providing for deposit into the election

Appendix D

Campaign Financing Trust Fund of a portion of certain filing fees and assessments; providing for transfer of funds into the trust fund from general revenue under certain circumstances; amending s. 106.33, F.S.; revising election campaign financing eligibility provisions; amending s. 106.34, F.S.; revising the expenditure limits for candidates for Governor and Lt. Governor or Cabinet officer who accept contributions from the Election Campaign Financing Trust Fund; amending s. 106.35, F.S.; revising election campaign financing provisions relating to reporting and to certification and distribution of funds, including matching requirements; providing rulemaking authority; creating s. 106.353, F.S.; requiring candidates voluntarily abiding by election campaign financing limits but not requesting public funds to file an irrevocable statement to that effect with the Secretary of State; providing a penalty; creating s. 106.355, F.S.; providing for release from the expenditure limits when opposing nonparticipating candidates exceed the limits; amending s. 106.36, F.S., to conform; amending s. 199.052, F.S.; requiring the annual intangible tax return to permit a voluntary contribution to the Election Campaign Financing Trust Fund; amending s. 320.02, F.S.; requiring the application form for motor vehicle registration to permit a voluntary contribution to the Election Campaign Financing Trust Fund, amending s. 322.08, F.S.; requiring the driver's license application form to permit a voluntary contribution to the Election Campaign Financing Trust Fund; amending s. 327.25, F.S.; requiring the application form for boat registrations to permit a voluntary contribution to the Election Campaign Financing Trust Fund; amending s. 607.1622, F.S.; requiring the annual report form for domestic and foreign corporations to permit a voluntary contribution to the Election Campaign Financing Trust Fund; amending s. 99.012, F.S.; providing restrictions on persons qualifying for public office; providing exceptions; providing definitions; providing for removal of a person's name from the

ballot for his failure to comply with the restrictions under certain circumstances; amending s. 99.061, F.S.; requiring all candidates to file financial disclosure at the time of qualifying; amending s. 163.566, F.S., to correct a cross reference; requiring the Department of Revenue to conduct a study for the purpose of recommending a suitable form for voluntary contributions to the Election Campaign Financing Trust Fund; requiring to the extent permitted by federal law, radio and television stations, including cable television stations, to make air time available to candidates for public office at the lowest unit rate; providing severability; providing effective dates.

WHEREAS, the Legislature finds a compelling state interest in strengthening the integrity of, and public confidence in, the electoral process, and

WHEREAS, the Legislature seeks to serve that compelling state interest through campaign finance reform and by establishing public funding of political campaigns, and

WHEREAS, the Legislature has determined that the measures set forth below are narrowly tailored to serve the compelling state interest in public confidence in the electoral process, and that they are the least restrictive alternatives for the following reasons:

(1) They do not significantly burden any individual's right to political expression or symbolic political communication;

(2) They do not compel political speech from individuals who wish to refrain from such speech (e.g., apolitical taxpayers), or otherwise unduly burden the public treasury;

(3) As to filing fees, candidates retain a viable alternative to

paying the filing fees prescribed herein;

(4) The measures enacted below are less expensive to collect; and

(5) Other measures than those enacted below would inhibit the state's ability to perform its governmental functions, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Effective July 1, 1991, subsection (1) of section 99.092, Florida Statutes, is amended to read:

99.092 Qualifying fee of candidate; notification of Department of State.—

(1) Each person seeking to qualify for nomination or election to any office, except a person seeking to qualify pursuant to s. 99.095 and except a person seeking to qualify as a write-in candidate, shall pay a qualifying fee, which shall consist of a filing fee and election assessment, to the officer with whom he qualifies, and any party assessment levied, and shall attach the original or signed duplicate of the receipt for his party assessment or pay the same, in accordance with the provisions of s. 103.121, at the time of filing his other qualifying papers. The amount of the filing fee is *4.5 [3]* percent of the annual salary of the office. ***The amount of the filing fee equal to 1.5 percent of the annual salary of the office shall be transferred to the Election Campaign Financing Trust Fund. The remainder shall be distributed pursuant to s. 99.103.*** The amount of the election assessment is 1 percent of the annual salary of the office sought. The election assessment shall be deposited into the Elections Commission Trust Fund. The amount

of the party assessment is 2 percent of the annual salary. The annual salary of the office for purposes of computing the filing fee, election assessment, and party assessment shall be computed by multiplying 12 times the monthly salary, excluding any special qualification pay, authorized for such office as of July 1 immediately preceding the first day of qualifying. No qualifying fee shall be returned to the candidate unless he withdraws his candidacy before the last date to qualify. If a candidate dies prior to an election and has not withdrawn his candidacy before the last date to qualify, his qualifying fee shall be returned to his designated beneficiary, and, if the filing fee or any portion thereof has been transferred to the political party of the candidate, the Secretary of State shall direct the party to return that portion to the designated beneficiary of the candidate.

Section 2. Effective July 1, 1991, subsection (1) of section 99.093, Florida Statutes, is amended to read:

99.093 Municipal candidates; election assessment.—

(1) Each person seeking to qualify for nomination or election to a municipal office shall pay, at the time of qualifying for office, an election assessment. The election assessment shall be an amount equal to ***1.5 [1]*** percent of the annual salary of the office sought. Within 30 days after the close of qualifying, the qualifying officer shall forward ***two-thirds of the amount*** [***all amounts***] collected pursuant to this section to the Department of State for deposit in the Elections Commission Trust Fund ***and one-third of the amount collected pursuant to this section shall be transferred to the Election Campaign Financing Trust Fund.***

Section 3. Effective July 1, 1991, section 99.0965, Florida Statutes, is created to read:

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99.0965 Signature requirements for ballot position in year of apportionment.—

(1) In a year of apportionment, any candidate for representative to Congress, state Senate, or state House of Representatives seeking ballot position by the alternative method or as an independent candidate or any minor party seeking ballot position shall obtain at least the number of signatures equal to 1 percent of the ideal population for the district of the office being sought.

(2) For the purposes of this section, "ideal population" means the total population of the state based upon the most recent decennial census divided by the number of districts for representative to Congress, state Senate, or state House of Representatives. For the purposes of this section, ideal population shall be calculated as of July 1 of the year prior to apportionment. The ideal population for a state Senate district and a state representative district shall be calculated by dividing the total population of the state by 40 for a state Senate district and by dividing by 120 for a state representative district.

(3) Signatures may be obtained from any registered voter in Florida regardless of party affiliation or district boundaries.

(4) Petitions shall state the name of the office the candidate is seeking, but shall not include a district number.

(5) Except as otherwise provided in this section, all requirements and procedures relating to the petition process shall conform to the requirements and procedures in nonapportionment years.

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Section 4. Section 99.103 Florida Statutes, is amended to read:

99.103 Department of State to remit part of filing fees and party assessments of candidates to state executive committee.—

(1) If more than three-fourths of the full authorized membership of the state executive committee of any party was elected at the last previous election for such members and if such party is declared by the Department of State to have recorded on the registration books of the counties, as of the first Tuesday after the first Monday in January prior to the first primary in general election years, 5 percent of the total registration of such counties when added together, such committed shall receive, for the purpose of meeting its expenses, all filing fees collected by the Department of State from its candidates less ***the amount transferred to the Election Campaign Financing Trust Fund pursuant to s. 99.092 and*** an amount equal to 15 percent of the filing fees ***after such transfer,*** which amount the Department of State shall deposit in the General Revenue Fund of the state.

(2) Not later than 20 days after the close of qualifying in even-numbered years, the Department of State shall remit 95 percent of all filing fees, less ***the amount transferred to the Election Campaign Financing Trust Fund pursuant to s. 99.092 and*** the amount deposited in general revenue pursuant to subsection (1), or party assessments that may have been collected by the department to the respective state executive committees of the parties complying with subsection (1). Party assessments collected by the Department of State shall be remitted to the appropriate state executive committee, irrespective of other requirements of this section, provided such committee is duly organized under the provisions of chapter 103. The remainder of

filing fees or party assessments collected by the Department of State shall be remitted to the appropriate state executive committees not later than the date of the first primary.

Section 5. Effective July 1, 1991, subsection (3) of section 105.031, Florida Statutes, is amended to read:

105.031 Qualification; filing fee; candidate's oath.—

(3) QUALIFYING FEE.—Each candidate qualifying for election to judicial office, except write-in judicial candidates, shall, during the time for qualifying, pay to the officer with whom he qualifies a qualifying fee, which shall consist of a filing fee and an election assessment, or qualify by the alternative method. The amount of the filing fee is ***4.5[3]*** percent of the annual salary of the office sought. The amount of the election assessment is 1 percent of the annual salary of the office sought. The qualifying officer shall forward all filing fees to the Department of Revenue for deposit in the General Revenue Fund. ***One-third of all filing fees deposited into the General Revenue Fund shall be subsequently transferred to the Election Campaign Financing Trust Fund.*** The election assessment shall be deposited into the Elections Commission Trust Fund. The annual salary of the office for purposes of computing the qualifying fee shall be computed by multiplying 12 times the monthly salary authorized for such office as of July 1 immediately preceding the first day of qualifying. This subsection shall not apply to candidates qualifying for retention to judicial office.

Section 6. Effective July 1, 1991, subsections (1) and (4) of section 106.04, Florida Statutes, 1990 Supplement, are amended to read:

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106.04 Committees of continuous existence.—

(1) In order to qualify as a committee of continuous existence for the purposes of this chapter, a group, organization, association, or other such entity which is involved in making contributions to candidates, political committees, or political parties, shall meet the following criteria:

(a) It shall be organized and operated in accordance with a written charter or set of bylaws which contains procedures for the election of officers and directors and which clearly defines membership in the organization; and

(b) At least 25 percent of the income of such organization, ***excluding interest,*** must be derived from dues or assessments payable on a regular basis by its membership pursuant to provisions contained in the charter or bylaws.

(4)(a) Each committee of continuous existence shall file an annual report with the Division of Elections during the month of January. Such annual reports shall contain the same information and shall be accompanied by the same materials as original applications filed pursuant to subsection (2). However, the charter or bylaws need not be filed if the annual report is accompanied by a sworn statement by the chairman that no changes have been made to such charter or bylaws since the last filing.

(b)*1.* Each committee of continuous existence shall file regular reports with the division of elections at the same times and subject to the same filing conditions as are established by s. 106.07(1) and (2) for candidates' reports.

2. Each committee of continuous existence shall pay a 1.5 percent assessment on all contributions, excluding in-kind

contributions. The assessment shall be remitted to the division of Elections at the time contribution reports are due. The Division of Elections shall deposit the proceeds of the assessment into the Election Campaign Financing Trust Fund.

3. Any committee of continuous existence failing to so file a report with the Division of Elections pursuant to this paragraph on the designated due date shall be subject to a fine for late filing as provided by this section.

(c) All committees of continuous existence shall file the original and one copy of their reports with the Division of Elections. In addition, a duplicate copy of each report shall be filed with the supervisor of elections in the county in which the committee maintains its books and records, except that if the filing officer to whom the committee is required to report is located in the same county as the supervisor no such duplicate report is required to be filed with the supervisor. Reports shall be on forms provided by the division and shall contain the following information:

1. The full name, address, and occupation of each person who has made one or more contributions to the committee during the reporting period, together with the amounts and dates of such contributions. However, if the contribution is $100 or less, the occupation of the contributor need not be listed, and only the name and address are necessary. However, for any contributions which represent the payment of dues by members in a fixed amount pursuant to the schedule on file with the Division of Elections, only the aggregate amount of such contributions need be listed, together with the number of members paying such dues and the amount of the membership dues.

2. The name and address of each political committee or

committee of continuous existence from which the reporting committee received, or the name and address of each political committee, committee of continuous existence, or political party to which it made, any transfer of funds, together with the amounts and dates of all transfers.

3. Any other receipt of funds not listed pursuant to subparagraph 1. or subparagraph 2., including the sources and amounts of all such funds.

4. The name and address of, and office sought by, each candidate to whom the committee has made a contribution during the reporting period together with the amount and date of each contribution.

(d)(e) The treasurer of each committee shall certify as to the correctness of each report and shall bear the responsibility for its accuracy and veracity. Any treasurer who willfully certifies to the correctness of a report while knowing that such report is incorrect, false, or incomplete commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 7. Effective July 1, 1991, subsections (1) and (3) of section 106.07, Florida Statutes, 1990 Supplement, is amended to read:

106.07 Reports; certification and filing.—

(1) Each campaign treasurer designated by a candidate or political committee pursuant to s. 106.021 shall file regular reports of all contributions received, and all expenditures made, by or on behalf of such candidate or political committee. Reports shall be filed on the 10th day following the end of each calendar quarter from the time the campaign treasurer is appointed, except that, if

the 10th day following the end of a calendar quarter occurs on a Saturday, Sunday, or legal holiday, the report shall be filed on the next following day which is not a Saturday, Sunday, or legal holiday. Quarterly reports shall include all contributions received and expenditures made during the calendar quarter which have not otherwise been reported pursuant to this section.

(a) ***Except as provided in paragraph (b),*** following the last day of qualifying for office, the reports shall be filed on the 32nd, 18th, and 4th days immediately preceding the first primary and on the 18th and 4th days immediately preceding the second primary and general election, for a candidate who is opposed in seeking nomination or election to any office, for a political committee, or for a committee of continuous existence.

(b) Following the last day of qualifying for office, any statewise candidate who has requested to receive contributions from the Election Campaign Financing Trust Fund or any statewide candidate in a race with a candidate who has requested to receive contributions from the trust fund shall file reports on the 4th, 11th, 18th, 25th, and 32nd days prior to the first primary and general elections and on the 4th, 11th, 18th, and 25th days prior to the second primary.

(c)[(b)] Following the last day of qualifying for office, any unopposed candidate need only file a report within 90 days after the date such candidate became unopposed. Such report shall contain all previously unreported contributions and expenditures as required by this section and shall reflect disposition of funds as required by s. 106.141.

*(d)[(e)]*1. When a special election is called to fill a vacancy in office, all political committees and committees of continuous

existence making contributions or expenditures to influence the results of such special election shall file campaign treasurers' reports with the filing officer on the dates set by the Department of State pursuant to s. 100.111.

2. When an election is called for an issue to appear on the ballot at a time when no candidates are scheduled to appear on the ballot, all political committees making contributions or expenditures in support of or in opposition to such issue shall file reports on the 18th and 4th days prior to such election.

(e)[(d)] The filing officer shall provide each candidate with a schedule designating the beginning and end of reporting periods as well as the corresponding designated due dates.

(3)***[(a)]*** Reports required of a political committee shall be filed with the agency or officer before whom such committee registers pursuant to s. 106.03(3) and shall be subject to the same filing conditions as established for candidates' reports. Only committees that file with the Department of State shall file the original and one copy of their reports. Incomplete reports by political committees shall be treated in the manner provided for incomplete reports by candidates in subsection (2).

(b) Each political committee shall pay a 1.5 percent assessment on all contributions, excluding in-kind contributions. The assessment shall be remitted to the filing officer at the time contribution reports are due. The filing officer shall transfer the assessment revenues to the division of Elections for deposit into the Election Campaign Financing Trust Fund.

Section 8. Effective July 1, 1991, subsection (1) of section

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106.29, Florida Statutes, 1990 Supplement, is amended to read:

106.29 Reports by political parties.—

(1)*(a)* The state executive committee and each county executive committee of each political party regulated by chapter 103 shall file regular reports of all contributions received and all expenditures made by such committee. Such reports shall contain the same information as do reports required of candidates by s. 106.07 and shall be filed on the 10th day following the end of each calendar quarter, except that, during the period from the last day for candidate qualifying until the general election, such reports shall be filed on the Friday immediately preceding the first primary election, the second primary election, and the general election. Each state executive committee shall file the original and one copy of its reports with the Division of Elections. Each county executive committee shall file its reports with the supervisor of elections in the county in which such committee exists. Any political party failing to file a report on the designated due date shall be subject to a fine as provided in s. 106.07 for submitting late reports. No separate fine shall be assessed for failure to file a copy of any report required by this section.

(b) Each state executive committee and county executive committee of each political party shall pay a 1.5 percent assessment on all contributions, excluding contributions received from political committees and committees of continuous existence and excluding in-kind contributions and filing fees. The assessment shall be remitted by the political party executive committee to the filing officer at the time contribution reports are due. The filing officer shall transfer the assessment revenues to the Division of Elections for deposit into the Election Campaign Financing Trust Fund.

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Section 9. Subsections (3) and (5) of section 106.011, Florida Statutes, 1990 Supplement, are amended to read:

106.011 Definitions.—As used in this chapter, the following terms have the following meanings unless the context clearly indicates otherwise:

(3) "Contribution" means:

(a) A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election.

(b) A transfer of funds between political committees, between committees of continuous existence, or between a political committee and a committee of continuous existence.

(c) The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.

(d) The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, and the term includes any interest earned on such account or certificate.

Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services, ***including, but not limited to, legal and accounting services,*** provided without compensation by individuals volunteering a portion or all of their

time on behalf of a candidate or political committee. This definition shall not be construed to include editorial endorsements.

(5) "Independent expenditure" means an expenditure by a person for the purpose of advocating the election or defeat of a candidate or the approval or rejection of an issue, which expenditure is not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee. ***An expenditure for such purpose by a person having a contract with the candidate, political committee, or agent of such candidate or committee in a given election period shall not be deemed an independent expenditure.***

Section 10. Subsection (5) is added to section 106.021, Florida Statutes, 1990 Supplement, and paragraph (a) of subsection (1) of said section is amended to read:

106.021 Campaign treasurers; deputies; primary and secondary depositories.—

(1)(a) Each candidate for nomination or election to office and each political committee shall appoint a campaign treasurer. Each person who seeks to qualify for nomination or election to, or retention in, office shall appoint a campaign treasurer and designate a primary campaign depository prior to qualifying for office. Any person who seeks to qualify for election or nomination to any office by means of the petitioning process shall appoint a treasurer and designate a primary depository on or before the date he obtains the petitions. Each candidate shall at the same time he designates his campaign depository and appoints his treasurer also designate the office for which he is a candidate. If the candidate is running for an office which will be grouped on the ballot with two or more similar offices to be filled at the same election, the

candidate must indicate for which group or district office he is running. Nothing in this subsection shall prohibit a candidate, at a later date, from changing the designation of the office for which he is a candidate [***and using the campaign funds for that candidacy.***] ***However, if a candidate changes the designated office for which he is a candidate, he must notify all contributors in writing of his intent to seek a different office and offer to return pro rata, upon their request, those contributions given in support of the original office sought. This notification shall be given within 15 days after the filing of the change of designation and shall include a standard form developed by the Division of Elections for requesting the return of contributions. The notice requirement shall not apply to any change in a numerical designation resulting solely from redistricting. If, within 30 days after being notified by the candidate of his intent to seek a different office, the contributor notifies the candidate in writing that he wishes his contribution to be returned, the candidate shall return the contribution, on a pro rata basis, calculated as of the date the change of designation is filed. Any contributions not requested to be returned within the 30-day period may be used by the candidate for the newly designated office.*** No person shall accept any contribution or make any expenditure with a view to bring about his nomination, election, or retention in public office, or authorize another to accept such contributions to make such expenditure on his behalf, unless such person has appointed a campaign treasurer and designated a primary campaign depository. A candidate for an office voted upon statewide may appoint not more than 15 deputy campaign treasurers, and any other candidate or political committee may appoint not more than 3 deputy campaign treasurers. The names and addresses of the campaign treasurer and deputy campaign treasurers so appointed shall be filed with the officer before whom such candidate is required to qualify or with whom such political committee is

required to register pursuant to s. 106.03. Each candidate who qualifies with the Department of State for an office not voted upon statewide shall, at the same time, file a copy of the name and address of the campaign treasurer with the supervisor of elections in the county in which the candidate resides.

(5) For purposes of appointing a campaign treasurer and designating a campaign depository, candidates for the offices of Governor and Lieutenant Governor on the same ticket shall be considered a single candidate.

Section 11. Subsection (1) of section 106.08, Florida Statutes, 1990 Supplement, is amended, present subsection (5) is renumbered as subsection (6) and amended, present subsections (2), (3), (4), (6), and (7) are redesignated as subsections (3), (4), (5), (7), and (8), respectively, and a new subsection (2) is added to said section, to read:

106.08 Contributions; limitations on.—

(1)*(a)* No person, political committee, or committee of continuous existence shall make contributions to any candidate or political committee in this state, for any election, in excess of the following amounts:

1.[(a)] To a candidate for countywide office or to a candidate in any election conducted on less than a countywide basis, ***$500 [$1,000].***

2.[(b)] To a candidate for legislative of multicounty office, ***$500 [$1,000].***

3.[(c)] To a candidate for statewide office, ***$500 [$3,000].***

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Candidates for the offices of Governor and Lieutenant governor ***on the same ticket*** shall be considered a single candidate for the purpose of this section.

4.[(d)] To a political committee supporting or opposing one or more candidates, ***$500 [$1,000].***

5.[(e)] To a candidate for county court judge or circuit judge, ***$500 [$1,000].***

6.[(f)] To a candidate for retention as a judge of a district court of appeal, ***$500 [$2,000].***

7.[(g)] To a candidate for retention as a justice of the Supreme Court, ***$500 [$3,000].***

(b) The contribution limits provided in ***this subsection [paragraphs (a)-(g)]*** shall not apply to contributions made by a state or county executive committee of a political party regulated by chapter 103 or to amounts contributed by a candidate to his own campaign. ***Notwithstanding the limits provided in this subsection, no unemancipated child under the age of 18 years of age may make a contribution to any candidate or to any political committee supporting one or more candidates, in excess of $100.*** The limitations provided by this subsection shall apply to each election.

(c) For purposes of this subsection the first primary, second primary, and general election shall be deemed separate elections so long as the candidate is not an unopposed candidate as defined to s. 106.011(15). However, for the purpose of contribution limits with respect to candidates for retention as a justice of the Supreme Court or judge of a district court of appeal, there shall be only one

election, which shall be the general election, and with respect to candidates for circuit judge or county court judge, there shall be only two elections, which shall be the first primary election and general election.

(2)(a) A candidate may not accept contributions from national, state, and county executive committees of a political party, which contributions in the aggregate exceed $50,000, no more than $25,000 of which may be accepted prior to the 28-day period immediately preceding the date of the general election.

(b) For the purposes of this subsection:

1. Print, broadcase, cable, and mailing advertisements are contributions in an amount equal to their fair market value and shall be counted toward the contribution limits of this subsection.

2. Polling services, research services, technical assistance, and voter mobilization efforts are not contributions to be counted toward the contribution limits of this subsection.

(6)[(5)] Any person who knowingly and willfully makes a contribution in violation of subsection (1) or subsection *(5)[(4)]*, or any person who knowingly and willfully fails or refuses to return any contribution as required in subsection *(3)[(2)]*,is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If any corporation, partnership, or other business entity or any political committee or committee of continuous existence is convicted of knowingly and willfully violating this section, it shall be fined not less than $1,000 and not more than $10,000. If it is a domestic entity, it may be ordered dissolved by a court of competent jurisdiction; if it is a foreign or nonresident business entity, its right to do business in this state may

be forfeited. Any officer, partner, agent, attorney, or other representative of a corporation, partnership, or other business entity or of a political committee of continuous existence who aids, abets, advises, or participates in a violation of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7)[(6)] any person who knowingly and willfully violates the provisions of this section shall, in addition to any other penalty prescribed by this chapter, pay to the state a sum equal to twice the amount contributed in violation of this chapter. Each campaign treasurer shall pay all amounts contributed in violation of this section to the state for deposit in the General Revenue Fund.

Section 12. For the purpose of incorporating the amendment to section 106.08, Florida Statutes, 1990 Supplement, in references thereto, the sections or subdivisions of Florida Statutes set forth below are reenacted to read:

106.04 Committees of continuous existence.—

(5) No committee of continuous existence shall contribute to any candidate or political committee an amount in excess of the limits contained in s. 106.08(1) or participate in any other activity which is prohibited by this chapter. If any violation occurs, it shall be punishable as provided in this chapter for the given offense. No funds of a committee of continuous existence shall be expended on behalf of a candidate, except by means of a contribution made through the duly appointed campaign treasurer of a candidate. No such committee shall make expenditures in support of, or in opposition to an issue unless such committee first registers as a political committee pursuant to this chapter and undertakes all the practices and procedures required thereof; provided such

committee may make contributions in a total amount not to exceed 25 percent of its aggregate income, as reflected in the annual report filed for the previous year, to one or more political committees registered pursuant to s. 106.03 and formed to support or oppose issues.

106.075 Elected officials; report of loans made in year preceding election; limitation on contributions to pay loans.—

(2) Any person who makes a contribution to an individual to pay all or part of a loan incurred, in the 12 months preceding the election, to be used for the individual's campaign, may not contribute more than the amount which is allowed in s. 106.08(1).

106.19 Violations by candidates, persons connected with campaigns, and political committees.—

(1) Any candidate; campaign manager, campaign treasurer, or deputy treasurer of any candidate; committee chairman, vice chairman, campaign treasurer, deputy treasurer, or other officer of any political committee; agent or person acting on behalf of any candidate or political committee; or other person who knowingly and willfully:

(a) Accepts a contribution in excess of the limits prescribed by s. 106.08;

is guilty of a misdemeanor of the first degree, punishable as provided in. s. 775.082 or s. 775.083.

106.29 Reports by political parties.—

(4) No state or county executive committee, in the

furtherance of any candidate or political party, directly or indirectly, shall give, pay, or expend any money, give or pay anything of value, authorize any expenditure, or become pecuniarily liable for any expenditure prohibited by this chapter. However, the contribution of funds by one executive committee to another, to established party organizations for legitimate party or campaign purposes, or to individual candidates of that party in general elections in amounts exceeding those set forth in s. 106.08 is not prohibited, but all such contributions shall be recorded and accounted for in the reports of the contributor and recipient.

Section 13. Section 106.085, Florida Statutes, is created to read:

106.085 Independent expenditures; unfair surprise prohibited; penalty.—

(1) Any individual, group, organization, or committee making an independent expenditure in excess of $1,000 on behalf of or in opposition to a candidate shall deliver notice in writing of such independent expenditure, as well as the amount of such expenditure and a detailed description of the media type or use of such expenditure, within 24 hours after obligating any funds for such expenditure. An expenditure is obligated upon the purchase of any political advertising or the entering into any agreement, either oral or written, to purchase any political advertising. Such notice shall be delivered to all of the candidates in the affected race and to the qualifying officer of such candidates. The notice shall specifically state the name of the candidate whom the independent expenditure is designed to support or oppose. For purposes of this subsection, notice shall include, but is not limited to, personal hand delivery or overnight mail. Each new expenditure shall require the delivery or filing of

an additional new notice.

(2) A person who violates any provision of this section shall be liable for a civil fine of up to $5,000 to be determined by the Florida Elections Commission or an amount equal to 10 percent of the expenditure not noticed, whichever is greater.

Section 14. Paragraph (a) of subsection (4) of section 106.11, Florida Statutes, is amended to read:

106.11 Expenses of and expenditures by candidates and political committees. Each candidate and each political committee which designates a primary campaign depository pursuant to s. 106.021(1) shall make expenditures from funds on deposit in such primary campaign depository only in the following manner, with the exception of expenditures made from petty cash funds provided by s. 106.12:

(4) A candidate who withdraws his candidacy, becomes an unopposed candidate, or is eliminated as a candidate or elected to office may expend funds from the campaign account to:

(a) Purchase "thank you" advertising ***[in the communications media]*** for up to 75 days after he withdraws, becomes unopposed, or is eliminated or elected.

Section 15. Paragraph (a) of subsection (4) of section 106.141, Florida Statutes, 1990 Supplement, is amended to read:

106.141 Disposition of surplus funds by candidates.—

(4)(a) Except as provided in paragraph (b), any candidate required to dispose of funds pursuant to this section shall, at the

option of the candidate, dispose of such funds by any of the following means, or any combination thereof:

1. Return pro rata to each contributor the funds which have not been spent, or have not been obligated to be spent, with respect to a campaign which has been conducted.

2. Donate the funds which have not been spent or have not been obligated to be spent to a charity organization or organizations which meet the qualifications of s. 501(c)(3) of the Internal Revenue Code, with respect to a campaign which has been conducted.

3. Give the funds which have not been spent or have not been obligated to be spent to the political party of which such candidate is a registered member.

4. Give the funds which have not been spent, or have not been obligated to be spent, with respect to a campaign which has been conducted:

a. In the case of a candidate for state office, to the state, to be deposited in ***either the Election Campaign Financing Trust Fund or*** the General Revenue Fund, ***as designated by the candidate;*** or

b. In the case of a candidate for an office of a political subdivision, to such political subdivision, to be deposited in the general fund thereof.

Section 16. Subsection (1) of section 106.143, Florida Statutes, 1990 Supplement, is amended subsection (6) is renumbered as subsection (7), and a new subsection (6) is added to said section, to read:

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106.143 Political advertisements circulated prior to election; requirements.—

(1) Any political advertisement and any campaign literature published, displayed, or circulated prior to, or on the day of, any election shall:

(a) Be marked "paid political advertisement" or with the abbreviation "pd. pol. adv.".

(b) Identify the persons or organizations sponsoring the advertisement.

(c)1.*a.* State whether the advertisement and the cost of production is paid for or provided in kind by or at the expense of the entity publishing, displaying, broadcasting, or circulating the political advertisement; ***or***

b.[2.] State who provided or paid for the advertisement and cost of production, if different from the source of sponsorship.

2.[3.] This paragraph shall not apply if the source of the sponsorship is patently clear from the content or format of the political advertisement or campaign literature.

This subsection does not apply to campaign messages used by a candidate and his supporters which messages are designed to be worn by a person.

(6) Any political advertisement which is published, displayed, or produced in a language other than English may provide the information required by this section in the language used in the advertisement.

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Section 17. Subsection (4) of section 106.15, Florida Statutes, is renumbered as subsection (5) and amended, and a new subsection (4) is added to said section, to read:

106.15 Certain acts prohibited.—

(4) No person shall make and no person shall solicit or knowingly accept any campaign contribution in a building owned by a governmental entity. For purposes of this subsection, "accept" means to receive a contribution by personal hand delivery from a contributor or his agent. This subsection shall not apply when a government-owned building or any portion thereof is rented for the specific purpose of holding a campaign fundraiser.

(5)[(4)] Any person violating the provisions of this section ***commits [is guilty of]*** a misdemeanor in the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 18. Subsection (6) of section 106.25, Florida Statutes, 1990 Supplement, is amended to read:

106.25 Reports of alleged violations to Department of State; disposition of findings.—

(6) Every sworn complaint filed pursuant to this chapter with the Division of Elections or the Florida Elections Commission, every division investigation and investigative report or other paper of the division or commission with respect to a violation of this chapter, and every proceeding of the commission with respect to a violation of this chapter is confidential, is exempt from the provisions of ss. 119.07(1) and 286.011, and is exempt from publication in the Florida Administrative Weekly of any notice or

agenda with respect to any proceeding relating to such violation except under the following circumstances:

(a) As provided in subsection (5);

(b) Upon a determination of probable cause or no probable cause by the commission;

(c) After a finding of no probable cause is made by the division and the case is not appealed; or

(d) For proceedings conducted with respect to appeals of fines levied by filing officers for the late filing of reports required by this chapter.

However, ***a complainant is not bound by the confidentiality provisions of this section. In addition,*** confidentiality may be waived in writing by the person against whom the complaint has been filed or the investigation has been initiated. If a finding of probable cause in a case is entered within 30 days prior to the date of the election with respect to which the alleged violation occurred, such finding and the proceedings and records relating to such case shall not become public until noon of the day following such election. When two or more persons are being investigated by the division with respect to an alleged violation of this chapter, the division or the commission may not publicly enter a finding of probable cause or no probable cause in the case until a finding of probable cause or no probable cause for the entire case has been determined. However, once the confidentiality of any case has been breached, the person or persons under investigation have the right to waive the confidentiality of the case, thereby opening up the proceedings and records to the public. Any person who discloses any information or matter made confidential by the

provisions of this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 19. Effective July 1, 1991, section 106.32, Florida Statutes, is amended to read:

106.32 Election Campaign Financing Trust Fund. —

(1) There is hereby established in the State Treasury an Election Campaign Financing Trust Fund to be utilized by the Department of State as provided in ss. 106.30-106.36. ***If necessary,*** each year in which a general election is to be held for the election of the Governor and Cabinet, ***additional funds shall be transferred [the Legislature shall appropriate]*** to the Election Campaign Financing Trust Fund from general revenue ***in*** an amount sufficient to fund qualifying candidates pursuant to the provisions of ss. 106.30-106.36. ***[In the event such appropriated moneys are insufficient to fully fund qualifying candidates, available funds shall be distributed on a proportional basis based on total available funds.]***

(2) Proceeds from filing fees pursuant to ss. 99.092, 99.093, and 105.031 shall be deposited into the Election Campaign Financing Trust Fund as designated in those sections.

(3) Proceeds from assessments pursuant to ss. 106.04, 106.07, and 106.29 shall be deposited into the Election Campaign Financing Trust Fund as designated in those sections.

Section 20. Section 106.33, Florida Statutes, 1990 Supplement, is amended to read:

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106.33 Election campaign financing; eligibility. — Each candidate for the office of Governor or member of the Cabinet who desires to receive contributions from the Election Campaign Financing Trust Fund shall, upon qualifying for office, file a request for such contributions with the filing officer on forms provided by the Division of Elections. If a candidate requesting contributions from the fund desires to have such funds distributed by electronic fund transfers, the request shall include information necessary to implement that procedure. For the purposes of ss. 106.30-106.36, candidates for Governor and Lieutenant Governor on the same ticket shall be considered as a single candidate. To be eligible to receive contributions from the fund, a candidate shall not be an unopposed candidate as defined in s. 106.011(15) and shall:

(1) Agree to abide by the expenditure limits provided in s. 106.34.

(2) Raise ***[qualifying matching]*** contributions ***as follows:***

(a) $150,000 for a candidate for Governor.

(b) $100,000 for a candidate for Cabinet office, [equal to 5 percent of the expenditure limit. Qualifying matching contributions are those from an individual of $250 or less made after September 1 of the calendar year prior to the election. Aggregate contributions from an individual in excess of $250 will be matched only up to $250. A contribution from an individual, if made by check, must be drawn on the personal bank account of the individual making the contribution, as opposed to any form of business account, regardless of whether the business account is for a corporation, partnership, sole proprietorship, trust, or other form of business arrangement. For contributions

made by check from a personal joint account, the match shall only be for the individual who actually signs the check.]

(3) Limit loans or contributions from the candidate's personal funds to $25,000 and contributions from national, state, and county executive committees of a political party to $25,000 in the aggregate, which loans or contributions shall not qualify for meeting the threshold amounts in subsection (2).

(4)[(3)] Submit to a postelection audit of the campaign account by the division.

Section 21. Section 106.34, Florida Statutes, 1990 Supplement, is amended to read:

106.34 Expenditure limits. —

(1) Any candidate for Governor ***and Lieutenant Governor*** or Cabinet officer who requests contributions from the Election Campaign Financing Trust Fund shall limit his total expenditures as follows:

(a) Governor and Lieutenant Governor: ***$5 million [75 cents times the number of votes cast for Governor in the last general election at which the office was contested.]***

(b) Cabinet officer: ***$2 million [25 cents times the number of votes cast for that office in the last general election or, if the office was uncontested in the last general election, then 25 cents times the number of votes cast for Governor.]***

(2) The expenditure limit for any candidate with primary election opposition only shall be 60 percent of the limit provided in subsection (1).

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(3) The expenditure limit shall be adjusted by the Secretary of State quadrennially to reflect the rate of inflation or deflation as indicated in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, 1967=100, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics.

(4) For the purposes of this section, the term "expenditure" does not include the payment of compensation for legal and accounting services rendered on behalf of a candidate.

Section 22. Section 106.35, Florida Statutes, 1990 Supplement, is amended to read:

106.35 Distribution of funds. —

(1) The division shall review each request for contributions from the Election Campaign Financing Trust Fund and certify whether the candidate is eligible for such contributions. Notice of the certification decision shall be provided to the candidate. An adverse decision may be appealed to the Florida Elections Commission. The division shall adopt rules providing a procedure for such appeals.

(2)*(a)* Each candidate who has been certified to receive contributions from the Election Campaign Financing Trust Fund shall be entitled to distribution of funds *as follows:*

1. For qualifying matching contributions making up all or any portion of the threshold amounts specified in s. 106.33(2), distribution shall be on a two-to-one basis.

2. For all other qualifying matching contributions,

distribution shall be on a one-to-one basis ***[for all qualifying matching contributions as defined in s. 106.33(2).]***

(b) Qualifying matching contributions are those from an individual of $250 or less made after September 1 of the calendar year prior to the election. Aggregate contributions from an individual in excess of $250 will be matched only up to $250. A contribution from an individual, if made by check, must be drawn on the personal bank account of the individual making the contribution, as opposed to any form of business account, regardless of whether the business account is for a corporation, partnership, sole proprietorship, trust, or other form of business arrangement. For contributions made by check from a personal joint account, the match shall only be for the individual who actually signs the check.

(3)(a) Certification and distribution of funds shall be based on contributions to the candidate reported ***[pursuant]*** to ***the division of such purpose [s. 106.07].*** The division shall review each report and verify the amount of funds to be distributed prior to authorizing the release of funds. The division may prescribe separate reporting forms for candidates for Governor and Cabinet officer.

(b) Notwithstanding the provisions of s. 106.11, a candidate who is eligible for a distribution of funds based upon qualifying matching contributions received and certified to the division on the report due on the 4th day prior to the election may obligate funds not to exceed the amount which the campaign treasurer's report shows the candidate is eligible to receive from the Election Campaign Financing Trust Fund, without the funds actually being on deposit in the campaign account.

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(4)[(3)(a) For candidctes with general election opposition or primary election opposition only], Distribution of funds shall be made within 7 days after the close of qualifying, ***[based on quarterly contribution reports],*** and ***every [within]*** 7 days ***thereafter [after the filing of contribution reports required on the 32nd, 18th, and 4th days before an election.]***

[(b) For candidates with primary election opposition and general election opposition, distribution shall be as provided in paragraph (a), except that for the first primary, funding shall only be matched in an amount up to 15 percent of the expenditure limit and, for the second primary, funding shall only be matched in an amount up to 25 percent of the expenditure limit.]

(5) the division shall adopt rules providing for the weekly reports and certification and distribution of funds pursuant thereto required by this section. Such rules shall, at a minimum, provide for:

(a) Specifications for printed campaign treasurer's reports outlining the format for such reports, including size of paper, typeface, color of print, and placement of required information on the form.

(b)1. Specfications for electronically transmitted campaign treasurer's reports outlining communication parameters and protocol, data record formats, and provisions for ensuring security of data and transmission.

2. All electronically transmitted campaign treasurer's reports must also be filed in printed format. Printed format shall not include campaign treasurer's reports submitted by electronic facsimile transmission.

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Section 23. Section 106.353, Florida Statutes, is created to read:

106.353 Candidates voluntarily abiding by election campaign financing limits but not requesting public funds: irrevocable statement required: penalty. —

(1) Not later than qualifying for office, each candidate for the office of Governor or member of the Cabinet who has not made a request to receive contributions from the Election Campaign Financing Trust Fund, but who wishes to voluntarily abide by the applicable expenditure limit set forth in s. 106.34 and the contribution limits on personal and party funds set forth in s. 106.33, shall file an irrevocable statement to that effect with the Secretary of State.

(2) Any candidate who files such a statement and subsequently exceeds such limits shall pay to the Election Campaign Financing Trust Fund an amount equal to the amount of the excess contributions or expenditures. Such penalty shall not be an allowable campaign expense and shall be paid from personal funds of the candidate. However, if a nonparticipating candidate exceeds the expenditure limit as described in s. 106.355, a candidate signing the statement pursuant to this section may exceed the applicable expenditure limit to the extent the nonparticipating candidate exceeded the limit without being subject to a penalty.

Section 24. Section 106.355, Florida Statutes, is created to read:

106.355 Nonparticipating candidate exceeding limits. — Whenever a candidate for the office of Governor or member of

the Cabinet who has elected not to participate in election campaign financing under the provisions of ss. 106.30-106.36 exceeds the applicable expenditure limit provided in s. 106.34, all opposing candidates participating in such election campaign financing are, notwithstanding the provisions of s. 106.33 or any other provision requiring adherence to such limit, released from such expenditure limit to the extent the nonparticipating candidate exceeded the limit, are still eligible for matching contributions up to such limit, and shall not be required to reimburse any matching funds provided pursuant thereto. In addition, the Department of State shall, within 7 days after a request by a participating candidate, provide such candidate with funds from the Election Campaign Financing Trust Fund equal to the amount by which the nonparticipating candidate exceeded the expenditure limit, not to exceed twice the amount of the maximum expenditure limits specified in s. 106.34(1)(a) and (b), which funds shall not be considered matching funds.

Section 25. Section 106.36, Florida Statutes, 1990 Supplement, is amended to read:

106.36 Penalties; fines. — In addition to any other penalties which may be applicable under the election code, any candidate who receives contributions from the Election Campaign Financing Trust Fund and who exceeds the applicable expenditure limit, ***except as authorized in ss. 106.353 and 106.355,*** or falsely reports qualifying matching contributions and thereby receives contributions from the Election Campaign Financing Trust Fund to which he was not entitled shall be fined an amount equal to three times the amount at issue, which shall be deposited in the Election Campaign Financing Trust Fund.

Section 26. Subsection (13) is added to section 199.052,

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Florida Statutes, to read:

199.052 Annual tax returns; payment of annual tax. —

(13) The annual intangible tax return shall include language permitting a voluntary contribution of $5 per taxpayer, which contribution shall be transferred into the Election Campaign Financing Trust Fund. A statement providing an explanation of the purpose of the trust fund shall also be included.

Section 27. Subsection (13) is added to section 320.02, Florida Statutes, 1990 Supplement, to read:

320.02 Registration required; application for registration; forms.—

(13) The application form for motor vehicle registration shall include language permitting a voluntary contribution of $5 per applicant, which contribution shall be transferred into the Election Campaign Financing Trust Fund. A statement providing an explanation of the purpose of the trust fund shall also be included.

Section 28. Subsection (6) is added to section 322.08, Florida Statutes, as amended by chapter 89-282, laws of Florida, to read:

322.08 Application for license.—

(6) The application form for a driver's license or duplicate thereof shall include language permitting a voluntary contribution of $5 per applicant, which contribution shall be transferred into the Election Campaign Financing Trust Fund.

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A statement providing an explanation of the purpose of the trust fund shall also be included.

Section 29. Subsection (7) of section 327.25, Florida Statutes, 1990 Supplement, is amended to read:

327.25 Classification; registration; fees and charges; surcharge; disposition of fees; fines.—

(7) VOLUNTARY CONTRIBUTIONS.—The application form for boat registration shall include a provision to allow each applicant to indicate his desire to pay an additional voluntary contribution to the Save the Manatee Trust Fund for manatee and marine mammal research, protection, and recovery. This contribution shall be in addition to all other fees and charges. Provisions for collecting this contribution shall begin with the boat registrations for fiscal year 1985. The amount of the request for a voluntary contribution solicited shall be $1 per registrant. Beginning with boat registration in fiscal year 1993, the request for a voluntary contribution solicited shall be $2 per registrant. All voluntary contributions shall be deposited in the Save the Manatee Trust Fund for use in accordance with the provisions of s. 370.12(5). ***The form shall also include language permitting a voluntary contribution of $5 per applicant, which contribution shall be transferred into the Election Campaign Financing Trust Fund. A statement providing an explanation of the purpose of the trust fund shall also be included.***

Section 30. Subsection (1) of section 607.1622, Florida Statutes, 1990 Supplement, is amended to read:

607.1622 Annual report for Department of State.—

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(1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the Department of State for filing a sworn annual report on such forms as the Department of State prescribes that sets forth:

(a) The name of the corporation and the state or country under the law of which it is incorporated;

(b) The date of incorporation or, if a foreign corporation, the date on which it was admitted to do business in this state;

(c) The address of its principal office and the mailing address of the corporation;

(d) The corporation's federal employer identification number, if any, or, if none, whether one has been applied for;

(e) The names and business street addresses of its directors and principal officers;

(f) The street address of its registered office and the name of its registered agent at that office in this state; and

(g) Language permitting a voluntary contribution of $5 per taxpayer, which contribution shall be transferred into the Election Campaign Financing Trust Fund. A statement providing an explanation of the purpose of the trust fund shall also be included; and

(h)[(g)] Such additional information as may be necessary or appropriate to enable the Department of State to carry out the provisions of this act.

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Section 31. Section 99.012, Florida Statutes, is amended to read:

(Substantial rewording of section
See s. 99.012, F.S., for present text.)

99.012 Restrictions on individuals qualifying for public office.—

(1) As used in this section:

(a) "Officer" means a person, whether elected or appointed, who has the authority to exercise the sovereign power of the state pertaining to an office recognized under the State Constitution or laws of the state. With respect to a municipality, the term "officer" means a person, whether elected or appointed, who has the authority to exercise municipal power as provided by the State Constitution, state laws, or municipal, charter.

(b) "Subordinate officer" means a person who has been delegated the authority to exercise the sovereign power of the state by an officer. With respect to a municipality, subordinate officer means a person who has been delegated the authority to exercise municipal power by an officer.

(2) No person may qualify as a candidate for more than one public office, whether federal, state, district, county, or municipal, if the terms or any part thereof run concurrently with each other.

(3)(a) No officer may qualify as a candidate for another public office, whether state, district, county, or municipal, if the

terms or any part thereof run concurrently with each other, without resigning from the office he presently holds.

(b) The resignation is irrevocable.

(c) The written resignation must be submitted at least 10 days prior to the first day of qualifying for the office he intends to seek.

(d) The resignation must be effective no later than the earlier of the following dates:

1. The date the officer would take office, if elected; or

2. The date the officer's successor is required to take office.

(e)1. An elected district, county, or municipal officer must submit his resignation to the officer before whom he qualified for the office he holds, with a copy to the Governor and the Department of State.

2. An appointed district, county, or municipal officer must submit his resignation to the officer or authority which appointed him to the office he holds, with a copy to the Governor and the Department of State.

3. All other officers must submit their resignations to the Governor with a copy to the Department of State.

(f)1. With regard to an elective office, the resignation creates a vacancy in office to be filled by election. Persons may qualify as candidates for nomination and election as if the public officer's term were otherwise scheduled to expire.

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2. With regard to an elective charter county office or elective municipal office, the vacancy created by the officer's resignation may be filled for that portion of his unexpired term in a manner provided by the respective charter. The office is deemed vacant upon the effective date of the resignation submitted by the official in his letter of resignation.

(g) Any officer who submits his resignation, effective immediately or effective on a date prior to the date of his qualifying for office, may then qualify for office as a nonofficeholder, and the provisions of this subsection do not apply.

(4)(a) Any officer who qualifies for federal public office must resign from the office he presently holds if the terms or any part thereof run concurrently with each other.

(b) The resignation is irrevocable.

(c) The resignation must be submitted no later than the date upon which he qualifies for office.

(d) The written resignation must be effective no later than the earlier of the following dates:

1. The date the officer would take office, if elected; or

2. The date the officer's successor is required to take office.

(e)1. An elected district, county, or municipal, officer must submit his resignation to the officer before whom he qualified for the office he holds, with a copy to the Governor and the Department of State.

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2. An appointed district, county, or municipal officer must submit his resignation to the officer or authority which appointed him to the office he holds, with a copy to the Governor and the Department of State.

3. All other officers must submit their resignations to the Governor with a copy to the Department of State.

(f)1. The failure of an officer who qualifies for federal public office to submit a resignation pursuant to this subsection constitutes an automatic irrevocable resignation, effective immediately, from the office he presently holds.

2. The Department of State shall send a notice of the automatic resignation to the Governor, and in the case of a district, county or municipal officer, a copy to:

a. The officer before whom he qualified if the officer held an elective office; or

b. The person or authority who appointed the officer if the officer held an appointive office.

(g) The provisions of any special act to the contrary notwithstanding, with regard to an elective office, the resignation creates a vacancy in office to be filled by election, thereby permitting persons to qualify as candidates for nomination and election as if the officer's term were otherwise scheduled to expire. With regard to an elective charter county office or elective municipal office, the vacancy created by the officer's resignation may be filled for that portion of his unexpired term in a manner provided by the respective charter. The office is deemed vacant upon the effective date of the resignation submitted by the official in his letter of resignation.

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(5) A person who is a subordinate officer, deputy sheriff, or police officer need not resign pursuant to this section unless he is seeking to qualify for a public office which is currently held by an officer who has authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office. however, upon qualifying, the subordinate officer, deputy sheriff, or police officer must take a leave of absence without pay during the period in which he is a candidate for office.

(6) The name of any person who does not comply with this section may be removed for every ballot on which it appears when ordered by a circuit court upon the petition of an elector or Department of State.

(7) This section does not apply to:

(a) Political party offices.

(b) Persons serving without salary as members of an appointive board or authority.

(8) Nothing contained in subsections (3) and (4) relates to persons holding any federal office.

Section 32. Subsections (4), (5), (6), and (7) of section 99.061, Florida Statutes, 1990 Supplement, are renumbered as subsections (5), (6), (7), and (8), respectively, and a new subsection (4) is added to said section, to read:

99.061 Method of qualifying for nomination or election to federal, state, county, or district office.—

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(4) At the time of qualifying for office, each candidate for a constitutional office shall file a full and public disclosure of financial interests pursuant to Section 8 of Article II of the State Constitution, and a candidate for any other office, including local elective office, shall file a statement of financial interests pursuant to s. 112.3145.

Section 33. Subsection (4) of section 163.566, Florida Statutes, is amended to read:

163.566 Definitions.—As used in this part, and unless the context clearly indicates otherwise:

Supreme Court, U.S.
FILED
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Case No. 94-476

IN THE

Supreme Court of the United States

October Term, 1994

HONORABLE NATH C. DOUGHTIE
AND HONORABLE KARL B. GRUBE,
Petitioners,

v.

FLORIDA DEPARTMENT OF STATE,
JIM SMITH, SECRETARY,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The respondent would restate the questions presented as follows:

> 1. May the State of Florida, consistently with the First and Fourteenth Amendments, and *Buckley v. Valeo,* 424 U.S. 1 (1976), increase the filing fee for candidates for judicial office from 3% to 4.5% of the annual salary of the office, which filing fee is placed in the state's General Revenue Fund, and then appropriate money from General Revenue to the Election Campaign Financing Trust Fund for distribution to qualifying candidates for statewide political offices?
>
> 2. What standard of judicial scrutiny applies to candidates' filing fees, the proceeds of which are placed in the state's General Revenue Fund to be appropriated for a variety of purposes, when payment of that fee is essentially voluntary because candidates have other reasonable means of qualifying for the ballot?

Respondent's reasons for restating the questions presented are explained in the Statement of the Case, *infra.*

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STATEMENT OF THE CASE

The two questions presented by the petitioners are not only argumentative but embody a legal conclusion that neither the district court nor the court of appeals accepted. Each of the questions petitioners present assumes that Chapter 91-107, Laws of Florida (1991), "was enacted for the specific purpose of raising revenue to fund the partisan political campaigns of candidates for the elective offices of Governor and Executive Cabinet by imposing a substantial monetary filing fee [on judicial candidates]." (Petition, p. i) Reasonable candidate filing fees serve many recognized purposes, however, and petitioners do not contend that the judicial candidates' filing fee does not serve such purposes. Furthermore, payment of the filing fee in Florida is not mandatory as judicial candidates have other reasonable means of ballot access. Respondent has therefore restated the questions presented.

Chapter 91-107, section 5, Laws of Florida (1991), amended section 105.031, Fla. Stat., by adding the following underscored language:

> 105.031 Qualification; filing fee, candidate's oath. —
>
> (3) QUALIFYING FEE. — Each candidate qualifying for election to judicial office, except write-in judicial candidates, shall, during the time for qualifying, pay to the officer with whom he qualifies a qualifying fee, which shall consist of a filing fee and an election assessment, or qualify by the alternative method. The amount of the filing fee is *4.5* ~~3~~ percent of the annual salary of the office sought. The amount of the election assessment is 1 percent of the annual salary of the office sought. The qualifying officer shall forward all filing fees to the Department of Revenue for deposit in the

> General Revenue Fund. *One-third of all filing fees deposited into the General Revenue Fund shall be subsequently transferred to the Election Campaign Financing Trust Fund.* The election assessment shall be deposited into the Elections Commission Trust Fund. The annual salary of the office for purposes of computing the qualifying fee shall be computed by multiplying 12 times the monthly salary authorized for such office as of July 1 immediately preceding the first day of qualifying. The subsection shall not apply to candidates qualifying for retention to judicial office.

Payment of the filing fee is *voluntary.*[1] As a result of the 1991 amendment, judicial candidates who *choose* to pay the filing fee must pay an amount equal to 4.5% of the annual salary of the office rather than 3%. All of the filing fees are deposited into the state's General Revenue Fund. Then, by law, an *amount* equal to one-third of the filing fees is appropriated *from the General Revenue Fund* to the Election Campaign Financing Trust Fund. According to petitioners, this is an appropriation of "their" filing fees, not general revenue money.

Judicial filing fees have varied in Florida over the years. In 1971, the law provided for judicial candidates to pay a flat 5% filing fee, all of which was placed in General Revenue. Section 105.031(3), Fla. Stat. (1971). In 1977, the filing fee was reduced to 3%. *See* Chap. 77-175, section 36, Laws of

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1 The district court struck the statutory requirement that judicial candidates wanting to qualify by the petition method of collecting signatures had to file an oath to the effect that paying the fee would impose an undue burden on their resources. (Pet. App. 2a, 12a-17a) As a result, a judicial candidate may qualify for the ballot by paying the total qualifying fee *or* by collecting sufficient signatures. The judicial candidate may qualify by using the alternative petition method irrespective of his or her financial resources.

Florida (1977), amending section 105.031(3), Fla. Stat. In 1989, section 105.031(3) was amended to provide for a filing fee of 3% and an election assessment of 1%. Again, the 3% filing fee was deposited in the General Revenue Fund and the 1% election assessment was directed to the Elections Commission Trust Fund. *See* Chapter 89-338, section 35, Laws of Florida (1989).

Chapter 91-107, section 5, Laws of Florida (1991), as set forth above, simply increased the filing fee from 3% to 4.5%, less than it was in 1971, and continued the long-standing practice of depositing the fees in the General Revenue Fund.

In their argument petitioners state the following conclusion of law and fact:

> [T]he fees challenged herein...were not imposed or used to regulate or conduct the non-partisan judicial elections in which they participated, but were imposed and used to finance the partisan political campaigns of candidates for Governor and executive Cabinet. In short, the challenged fees were not imposed or used by the state to defray the state's cost of running any election, but were used by political candidates in other elections to pay for their partisan political campaigns.

(Petition, p. 10)

Neither the district court nor the court of appeals agreed with this. As pointed out, the entire amount of the filing fee is deposited in the state's General Revenue Fund. Petitioners do not question the propriety or constitutionality of depositing fees in the General Revenue Fund, money from which is ordinarily appropriated to support a wide variety of needs and programs.

Although the complaint alleged that judicial filing fees could be used only to regulate or defray the costs of judicial

elections, petitioners submitted no evidence as to the expenses the state routinely bears in the administration and enforcement of the election laws, judicial or otherwise. In fact, the division of elections of the department of state has myriad elections-related responsibilities under chapters 97, 98, 99, 100, 101, 103, 104, 105 and 106, Fla. Stat., and respondent established by affidavit that for the fiscal year 1991-1992 the Florida Legislature appropriated $2,403,139.00 from the General Revenue Fund to the division of elections to carry out its many responsibilities. Petitioners do not explain how they now determine that appropriations to the division of elections from the General Revenue Fund come from one source rather than another or are used for some purposes but not others.

On the basis of the foregoing facts, the district court ruled the existence of the filing fee and its amount passed constitutional muster and that petitioners' challenge was simply to an appropriation of money from the state's General Revenue Fund. The challenge was barred under *Buckley v. Valeo,* 424 U.S. 1 (1976). (Pet. App. 7a) The court of appeals affirmed. (Pet. App. 1a)

Both petitioners claim they are continuing their challenge to the now voluntary filing fee because part of the remedy they seek is to have the state reimburse them the 1.5% increment in the filing fee. (Petition, pp. 4, 5) Their complaint, even as amended, did not seek reimbursement of any portion of the filing fee. It asked only for a ruling that the 4.5% filing fee was unconstitutional in its entirety. Petitioners' specific claim that they sought reimbursement as a remedy in the lower court (Petition, p. 5) is not supported by reference to the record or to any pleading.

SUMMARY OF ARGUMENT

The judicial candidates' filing fee in the amount of 4.5% of the annual salary of the office is plainly reasonable and constitutional under the case law and has not been challenged in this case as unnecessary to deter frivolous candidacies. The petitioners' challenge, as the court of appeals recognized, is to an appropriation of general revenue money to the Election Campaign Financing Trust Fund. This case is therefore indistinguishable from *Buckley v. Valeo,* 424 U.S. 1 (1976), wherein this Court ruled that taxpayers could not challenge appropriations from general revenue money to support qualifying candidates in presidential election campaigns. Moreover, judicial candidates in Florida can choose not to pay the filing fee; they may qualify by the petition method of collecting signatures if they wish.

Because the filing fees are deposited in the state's General Revenue Fund, it is not possible to say that any fee-generated dollar necessarily goes to the Election Campaign Financing Trust Fund. The statutory reference to one-third of the filing fees merely determines the amount of the appropriation. General revenue money supports many elections-related responsibilities of the State, particularly those of the department of state, division of elections. The money used to support the division of elections could just as easily be filing fee money. The petitioners have no recognized right to attempt to trace the use of money from a lawfully imposed fee through the appropriations process on the ground that their First Amendment interests as candidates are infringed if the filing fee is not used for the sole purpose of defraying the costs of the election in which they are running. Moreover, the argument that filing fees must be limited to the administrative costs of holding the election ignores the fact that the division of elections receives an annual appropriation

of $2.4 million from general revenue for its election-related responsibilities.

The petition fails to address any of the considerations of Supreme Court Rule 10.1 and does not attempt to show that the decision of the court of appeals conflicts with a reported decision of any court.

The applicable standard of judicial scrutiny, assuming an essentially voluntary filing fee must be further examined after *Bullock v. Carter,* 405 U.S. 134 (1972), is clearly established in *Bullock v. Takushi,* ____ U.S. ____, 112 S.Ct. 2059, 2063 (1992), and *Anderson v. Celebrezze,* 460 U.S. 780 (1983). There is no uncertainty or conflict to be resolved as to the appropriate standard of scrutiny, and therefore the second issue presents no basis for this Court to grant review. *See* Supreme Court Rule 10.1.

ARGUMENT

I. THE STATE MAY CONSTITUTIONALLY APPROPRIATE MONEY FROM ITS GENERAL REVENUE FUND, PART OF WHICH IS OBTAINED FROM THE FILING FEES OF JUDICIAL CANDIDATES, TO IMPLEMENT THE ELECTION CAMPAIGN FINANCING ACT.

Petitioners' argument acknowledges the controlling decisions of this Court that uphold candidate filing fees. *See Bullock v. Carter,* 405 U.S. 134 (1972), and *Lubin v. Panish,* 415 U.S. 709 (1974). The only limitation on candidate filing fees is that they be reasonable in amount and that those who cannot afford to pay them have an alternative means of qualifying for the ballot. One of the critical purposes filing fees serve is to control ballot access. Filing fees help to deter frivolous candidates, avoid overcrowded ballots and voter confusion, and ensure that the winner is the choice of a majority or at least a strong plurality. *Bullock,* 405 U.S. at 142; *Lubin,* 415 U.S. at 715. A filing fee is also justified in that it can help defray the costs of elections. *Bullock,* 405 U.S. at 147.

Petitioners cite not one case, and none is known to respondent, holding that a filing fee on the order of 4.5% of the annual salary of the office does not serve precisely the above functions. In fact, the Fifth Circuit Court of Appeals, the Eleventh Circuit's antecedent court, relying on *Bullock* and *Lubin,* long ago upheld a Florida law imposing a 5% filing fee on judicial candidates. *Adams v. Askew,* 511 F.2d 700, 701-703 (5th Cir. 1975). As the district court stated in finding the current filing fee constitutional, the issue presented here had been "raised before and rejected." (Pet. App. pp. 4a, 6c.)

Consequently, petitioners do not directly challenge the filing fee as such but rather claim that the incremental increase from 3% to 4.5% authorized by the 1991 law serves no "proper function." (Petition, p. 11) They maintain here, as they did below, that the increase serves no purpose other than to fund the campaigns of partisan political candidates through its appropriation to the Election Campaign Financing Trust Fund.

This argument fails for several reasons. First, a filing fee of 4.5% for judicial candidates can be presumed to have the effect of regulating ballot access and deterring frivolous candidacies, particularly in the absence of any contention that 4.5% is excessive as a ballot control measure. It was never the state's burden to prove that a reasonable filing fee of 4.5% correlates with exactly the right degree of ballot control, *see Munro v. Socialist Workers Party,* 479 U.S. 189, 194, 195-196 (1986), especially where, as here, a plaintiff declines to specifically plead such a challenge.[2]

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2 As the Court stated in *Munro:*

> We have never required a State to make a particularized showing of the existence of voter confusion, ballot overcrowding, or the presence of frivolous candidacies prior to the imposition of reasonable restrictions on ballot access.
>
> * * * *
>
> To require States to prove actual voter confusion, ballot overcrowding, or the presence of frivolous candidacies as a predicate to the imposition of reasonable ballot access restrictions would invariably lead to endless court battles over the sufficiency of the "evidence" marshaled by a State to prove the predicate. Such a requirement would necessitate that a State's political system sustain some level of damage before the legislature could take corrective action. Legislatures, we think, should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights.

479 U.S. at 194, 195-196.

Second, section 105.031 plainly requires that the filing fee be deposited in the General Revenue Fund. The legislature appropriates money from that fund for any number of purposes. One purpose is to support the division of elections which has numerous responsibilities relating to administration and enforcement of the election laws. The legislature also appropriates general revenue money to support the Elections Campaign Financing Trust Fund. It is not logically possible to conclude, as petitioners so blithely do, that the money going to the Trust Fund is "their" filing fees. It could as well represent the tax dollars of others. It is just as logical to conclude that petitioners' filing fees are part of the appropriation to the division of elections used to defray elections costs.

Because a 4.5% filing fee is proper *as such* petitioners have no right to challenge the use to which they contend the fees are put. This was exactly the point made in *Buckley v. Valeo,* 424 U.S. 1 (1976). In *Buckley* this Court considered a challenge brought by taxpayers to the use of tax money for financing presidential election campaigns. In rejecting the taxpayers' argument, the Court said:

> Appellants' challenge to the dollar check-off provision (§6096) fails for the same reason. They maintain that Congress is required to permit taxpayers to designate particular candidates of parties as recipients of their money. *But the appropriation to the Fund in §9006 is like any other appropriation from the general revenue except that its amount is determined by reference to the aggregate of the one- and two- dollar authorization on taxpayers' income tax returns.* This detail does not constitute the appropriation any less an appropriation by Congress. *The fallacy of appellants' argument is therefore apparent; every appropriation made by Congress*

uses public money in a manner to which some taxpayers object.

Id. at 91-92 (emphasis added). In two footnotes to the quoted paragraph the Court against emphasized that "[t]he §6096 check-off is simply the means by which Congress determines the amount of its appropriation," *id.* at 94 n. 124, and "Congress need not provide a mechanism for allowing taxpayers to designate the means in which their particular tax dollars are spent." *Id.* at 92 n. 125.

Because the 4.5% filing fee is proper in itself, it is *owed* by judicial candidates who choose to pay it rather than qualify by the petition method, just as the tax money in *Buckley* was owed by ordinary taxpayers. The filing fees are placed in the General Revenue Fund (as they have been for decades) just like most tax revenues. The legislature determines the *amount* of the appropriation to the Trust Fund by reference to a fraction—that is, one-third—of the filing fees. That fraction, like the dollar check-off provision in *Buckley,* is simply the means to determine the amount of the appropriation. Judicial candidates have no more right to object to appropriations of general revenue money than did the taxpayers in *Buckley.*

Petitioners' argument, logically extended, would mean that the legislature cannot constitutionally use any general revenue money to support the Trust Fund. *Any* appropriation of general revenue to the Trust Fund—whether by dollar amount or by reference to some fraction of the filing fee—would be in whole or in part "their" money designated to support partisan candidates. Of course, if petitioners are entitled to this objection on First Amendment grounds it would follow that any taxpayer whose tax dollars go into general revenue would be entitled to object to having to support the partisan campaigns of candidates he would prefer not to support. But *Buckley* expressly rejected such

an argument and approved public financing of presidential campaigns, stating that public financing "furthers, not abridges, pertinent First Amendment values." 424 U.S. at 92-93. *See also First National Bank of Boston v. Bellotti,* 435 U.S. 765, 788-789 (1978) (preventing corruption and the appearance of corruption in the electoral process are state interests "of the highest importance"). This being true, the Florida Legislature's appropriation of general revenue money to the Trust Fund does not violate any First Amendment interest of the petitioners or of taxpayers in general.

Third, petitioners seem to contend that their filing fees can be constitutionally appropriated only "to regulate or conduct the election [in] which the aspirants desired to participate...." [Petition, p. 13] Petitioners offered no evidence to establish the cost of administering judicial elections or enforcing election laws. They therefore cannot assert that the amount of the filing fee is disproportionate to the costs of administration and enforcement. It is too late in the day for petitioners to raise this issue. In any event, money being fungible, the $2.4 million yearly appropriation of general revenue money to the division of elections could as well be deemed to include all filing fees deposited in the General Revenue Fund.

Moreover, it must be kept in mind that one of the most important functions of a filing fee, wholly apart from any use made of the money, is to control and limit ballot access. It follows that a fee must be substantial enough to deter frivolous candidacies even if it exceeds administrative costs. This Court's decisions have never suggested the amount of a candidate's filing fee must be limited to the state's (or local government's) administrative costs.

Finally, petitioners' reliance on *West Lynn Creamery, Inc. v. Healy,* ___ U.S. ___, 114 S.Ct. 2205 (1994), is inapposite. That decision, applying the negative Commerce Clause,

held that Massachusetts could not impose an assessment (in effect, a tax) on milk from both in-state and out-of-state producers to create a special fund used to subsidize only Massachusetts dairy farmers.

The *Buckley* decision, however, would clearly permit a state to use its general revenue money to fund election campaigns. Unlike the fund created in *West Lynn Creamery,* Florida's General Revenue Fund consists of money from a variety of taxes and fees, including judicial filing fees. The reference to one-third of the filing fees determines only the amount of an appropriation. Moreover, under section 106.32(1), Fla. Stat., in each year which a general election is held the legislature must augment the Election Campaign Financing Trust Fund with money from general revenue sufficient to fund *all* qualifying candidates. Clearly, the Trust Fund used to assist qualifying political candidates consists of *everyone's* money.[3] Judicial candidates can avoid contributing to general revenue, if they find appropriations therefrom objectionable, by qualifying by the petition method.

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3 Section 106.32, Fla. Stat. (1993) provides:

> 106.32 Election Campaign Financing Trust Fund. -
> (1) There is hereby established in the State Treasury an Election Campaign Financing Trust Fund to be utilized by the Department of State as provided in §§ 106.30-106.36. *If necessary, each year in which a general election is to be held for the election of the Governor and Cabinet, additional funds shall be transferred to the Election Campaign Financing Trust Fund from general revenue in an amount sufficient to fund qualifying candidates pursuant to the provisions of §§ 106.30-106.36.*
> (2) Proceeds from filing fees pursuant to §§ 99.092, 99.093, and 105.031 shall be deposited into the Election Campaign Trust Fund as designated in those sections.
> (3) Proceeds from assessments pursuant to §§ 106.04, 106.07, and 106.29 shall be deposited into the Election Campaign Financing Trust Fund as designated in those sections.

(Emphasis added.)

II. THE PETITIONERS' SECOND QUESTION PRESENTS NO ISSUE THAT WOULD WARRANT THE EXERCISE OF THIS COURT'S DISCRETION TO GRANT REVIEW; THE SECOND QUESTION IS INHERENT IN THE FIRST AND PETITIONERS POINT TO NO CONFLICT AMONG DECISIONS FOR THIS COURT TO RESOLVE.

Only two years ago this Court reiterated that "the mere fact that a State's system 'creates barriers...tending to limit the field of candidates from which voters might choose...does not itself compel close scrutiny.' " *Burdick v. Takushi,* ____ U.S. ____, 112 S.Ct. 2059, 2063 (1992) (quoting *Bullock v. Carter,* 405 U.S. 134, 143 (1972)). Instead, as *Burdick* again made clear, it is the "flexible standard" set forth in *Anderson v. Celebrezze,* 460 U.S. 780 (1983), that applies in weighing asserted injury to rights protected by the First and Fourteenth Amendments. 112 S.Ct. at 2063. While it would be necessary to apply the *Anderson* standard should the Court grant review, there is no uncertainty or conflict among decisions as to what that standard is that would warrant this Court's review of the decision below. *See* Supreme Court Rule 10.1. *Brown v. Hartlage,* 456 U.S. 45 (1982), does not furnish that conflict. *Brown* did not involve state measures that limited the field of candidates but rather direct restrictions on the ideas offered by candidates. Those restrictions were appropriately subject to close scrutiny.

Moreover, as petitioners have framed the issue and their argument, they wholly ignore the fact that judicial candidates do not have to pay the filing fee to qualify. Their question misstates this fact by insisting the fee is "imposed." As explained above, judicial candidates have another reasonable method by which they may qualify *and* avoid the "burden" of which petitioners complain.

CONCLUSION

Petitioners fail to demonstrate any basis for this Court to grant a writ of certiorari or even to distinguish this case in any way from *Buckley v. Valeo*. Accordingly, the Court should deny the petition.

Respectfully submitted,

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No. 94-476

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In The

Supreme Court of the United States

October Term, 1994

HONORABLE NATH C. DOUGHTIE and HONORABLE KARL B. GRUBE,

Petitioners,

vs.

FLORIDA DEPARTMENT OF STATE, JIM SMITH, SECRETARY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

REPLY BRIEF FOR PETITIONERS

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ARGUMENT

In his brief in opposition to the issuance of the writ, Respondent Smith, Secretary of State of Florida, has raised new matter by attempting to argue the merits of the question posed to the Court by the petition for writ. Under this Court's rules, arguments on the merits in connection with the petition for writ is improper and entirely extraneous. The only proper matter to be addressed in these briefs is whether or not the petition poses a question of sufficient importance for this Court to agree to consider it on the merits.

Nevertheless, Respondent Smith's brief in opposition confirmed the specific aspect of Ch. 91-107 Laws of Florida that Petitioners seek to have this Court review under First and Fourteenth Amendment principles: *i.e.*, THE STATUTE IMPOSED A FEE UPON PETITIONERS AS A CONDITION TO THEIR QUALIFYING TO RUN FOR THE ELECTIVE OFFICE OF JUDGE FOR THE PURPOSE OF RAISING FUNDS TO PROVIDE PUBLIC FINANCING FOR THE POLITICAL CAMPAIGNS OF CANDIDATES FOR THE OFFICES OF GOVERNOR AND ELECTED CABINET OFFICE BY LINKING THE IMPOSITION OF A FILING FEE WITH AN APPROPRIATION TO THE FUND FOR FINANCING POLITICAL CAMPAIGNS. Respondent's Brief in Opposition to Petition for Writ of Certiorari, pp. 5, 9.

This petition, therefore, raises a First and Fourteenth Amendment ballot access question that has never been addressed by this Court; *i.e.*, MAY A STATE IMPOSE A SUBSTANTIAL FILING FEE UPON AN ASPIRANT'S FIRST AMENDMENT INTERESTS IN BECOMING A CANDIDATE FOR JUDICIAL OFFICE TO SATISFY THE STATE'S INTEREST, HAVING NOTHING TO DO WITH CONDUCTING OR REGULATING THE ELECTION TO WHICH THE ASPIRANT ASPIRES, TO

FINANCE THE POLITICAL CAMPAIGNS OF PARTISAN CANDIDATES FOR GOVERNOR AND EXECUTIVE CABINET?

Petitioners respectfully submit that the question is sufficiently important to core political freedoms to justify the immediate attention of this Court. Although Petitioners are desirous of arguing the merits of the issue, as Respondent Smith did in his brief in opposition, they will withhold those arguments as required by the rules of this Court until the Court gives leave to submit briefs on the merits.

Accordingly, Petitioners Doughtie and Grube respectfully submit that this Court should grant the petition and issue a writ of certiorari to the Court of Appeals.

Respectfully submitted,

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